

Town of Acton, Massachusetts

Request for Proposals

November 1, 2004



Acton Business Center

Section 1

Introduction

1.1 Introduction

The Town of Acton, Massachusetts (the “Town”) acting through its Board of Selectmen is soliciting proposals from qualified real-estate developers and or end users for the lease or purchase and development of the **Acton Business Center**. Acceptable uses for the property will be offices, wholesale or retail, outlets, hotel, research and development, bio-tech, or other similar uses.

Acton is located approximately 25 miles northwest of Boston, 14 miles south of Lowell, and 29 miles northeast of Worcester. The Town’s population has almost tripled in the past three decades due, in large part, to its proximity to Routes 2, 27, and 111 and its access to a commuter rail stop that makes for a relatively short commute to Boston. The Town is bordered by Carlisle and Concord to the east, Westford and Littleton to the north, Sudbury to the south, Maynard and Stow to the southwest, and Boxborough to the west. According to the 2000 U.S. Census, the Town’s total population is 20,331, which occupy nearly 7,500 households. The median income per household is \$91,624; the median income per family is \$108,189.

The Town seeks proposals that will:

- Maximize the Town’s income from the lease or sale of the site;
- Minimize, to the extent possible, the cost of the closure of the former landfill to the Town;
- Maximize the tax income for the site during and following development;
- Develop the property in a manner that is environmentally sound and consistent with the demographic characteristics of the Town and the surrounding communities.

As a condition of the lease or sale of this former landfill site, the selected developer shall conduct environmental assessments, design, permit, and construct a landfill cap that meets the requirements of 310 CMR 19.000 and earns the approval of the Massachusetts Department of Environmental Protection (DEP). The selected firm will be responsible for all aspects of the capping project and all costs will be borne by the selected bidder (see Section 1.4 for further details), including post-closure monitoring.

The Town seeks proposals for a portion of the land shown on Town of Acton Assessor’s Map G-4; Lots 75, 140, 76, and 167-1. Figure 1-1 is a site locus map. Figure 1-2 is a site plan.

Developers shall clearly state the total area needed for their proposal and provide a site plan of the proposed facility as outlined in this RFP. A disk is attached that contains the AutoCAD drawings of the site boundaries and topography.

The Town understands that most potential uses will require re-zoning and improvements to the site and access and egress via Route 2. The Town will work with the selected developer to facilitate reasonable physical changes and to bring reasonable zoning changes and related articles before the Town Meeting. While the Town is currently intending to use the adjacent land for DPW operations, the Town will consider relocating some operations to accommodate a proposed facility.

The Town will specifically evaluate the economic benefit to the Town of the proposed facility, compatibility of the proposed use with the surrounding land uses and the overall environmental impact of the proposed use in making a selection of a firm to implement their proposal.

Technical Proposals shall be submitted in a sealed envelope marked on the outside, **"Acton Business Center."** Financial Benefits proposals shall be submitted in a separate sealed envelope marked on the outside **"Financial Benefits Proposal for Acton Business Center."** Proposals will be accepted at the office of Mr. Don P. Johnson, Town Manager, Acton Town Hall, 472 Main Street, Acton, Massachusetts 01720 until 3:00 p.m. prevailing time on January 6, 2005. One original and five copies of all proposals shall be submitted to the Town. At the time the proposals are opened, they will not be made available to the public, in accordance with the RFP provisions of MGL 30B. The proposals will be registered and will then be evaluated by the Selection Committee according to the evaluation criteria specified in Section 2 of this RFP.

Additional information and environmental reports are available for viewing by contacting Mr. Bruce Stamski, Town Engineer/Director of Public Works at the Town Hall address given above. Telephone Number: (978) 264-9628.

Questions on the requirements of this Request for Proposals (RFP) shall be provided in writing to Mr. Stamski on or before December 6, 2004. Written addenda and clarifications shall be provided to all firms who are registered with the Town as having received the RFP.

A pre-proposal conference will be held at the Town Hall at 10:00 a.m. on December 1, 2004 to respond to any questions on the RFP or the process. This meeting will be followed by a site walk.

The Town reserves the right to waive any formality on or reject any or all proposals or select any firm if deemed to be in the best interests of the Town.

1.2 General Site Description

The future **Acton Business Center** site is located on a parcel of town owned land bordered to the north and east by Forest Road and to the south by State Highway Route 2. Abutting the site to the west is undeveloped town owned swampland. A private residential property abuts the site on its southeast corner. The land is

currently zoned Residential. The site is accessed exclusively from Route 2. See attached Figures.

The Town is proposing to provide 17.75 acres of the landfill and land immediately adjacent to the landfill site for lease (or sale) to qualified real-estate developers and or end users for development.

In 1986, the Town commissioned a Hydrology and Monitoring System study. Since the studies implementation, the Town has conducted annual groundwater sampling. The study and the past 5 years of groundwater results are attached to this document. The complete environmental assessment of the former landfill will be the responsibility of the selected firm. The material included in this RFP is for preliminary reference only. Additional environmental studies and data are available for viewing at the Town Hall.

1.3 Information to be Incorporated into Proposals

Prospective bidders are hereby made aware of the following site constraints and potential that should be incorporated into proposals for the development and use of the site:

- *Access to Proposed Facility.* The site is accessed exclusively from Route 2; the developer will not be permitted to utilize Forest Road to access the site.
- *Length of Lease.* Developers shall provide the proposed length for the lease needed for their specific facilities. At a minimum, the proposed lease shall be for 50-years with two 10-year options. The lease agreement will be subject to approval by the Acton Town Meeting¹ and a "Home Rule Petition" which the town will submit to the State Legislature. Any such lease shall include limitation provisions identical to or substantially similar to the provisions set forth in this RFP.
- *Offer to Purchase.* If the proposing firms wishes to purchase the property, developers shall include an Offer to Purchase. The Offer to Purchase should be valid through September 30, 2005 as it will be subject to approval by the Acton Town Meeting and a "Home Rule Petition" which the town will submit to the State Legislature. ² Any such Offer to Purchase shall include without limitation provisions identical to or substantially similar to the provisions set forth in this RFP.
- *Experience of Developer.* The Town shall carefully evaluate the experience of the selected firm in developing similar facilities to the one proposed for the **Acton Business Center**. The developer shall provide references from private individuals and/or municipal officials for whom the developer has developed facilities,

¹ The Town's legislative body is comprised of an Open Town Meeting, which occurs annually in April and at other times by special petition or call. Any registered voter in the Town can attend and vote at a Town Meeting. There is no quorum requirement. Decisions of the Town Meeting are made by either a majority or a super-majority (as applicable) of voters in attendance. If Town Meeting does not approve a disposition of Town-owned property or submission of a Home Rule Petition to the state legislature, Town officials cannot unilaterally act in that regard and this RFP could therefore not be awarded.

² See note 1 above.

particularly those that are similar to the type proposed. The Town may also contact regulatory officials in each location to determine the compliance status of the developer's facility as well as any issues with nuisance conditions.

- *Proven Technology.* In evaluating proposals, the Town shall give preference to technologies that are successfully operating in the United States and specifically in Massachusetts. Successful operation shall include obtaining all permits for construction and operation as well as the re-use of products produced by the facility. Developers shall provide the Town with all permits for the facility that is most similar to the one proposed for the leased property.
- *Zoning.* The landfill is currently zoned by the Town of Acton for R-2 Residential. A copy of Acton's Zoning Regulations is attached. The Town understands that the site will need to be re-zoned to the specific use of the proposed and will work with the selected developer to bring reasonable zoning changes before the Town Meeting. Any such zoning changes require a two-thirds vote of the Town Meeting and approval of the Attorney General. All developers shall review the Regulations and incorporate them into their proposal.
- *Truck Routes.* All trucks delivering materials to the site shall access the site from Route 2 exclusively. Developer will be responsible for all improvements to the access and egress points along Route 2. At no time will trucks or other construction vehicles be allowed to use Forest Road or other side streets in Acton. This provision shall not prohibit any trucks from using roads in any other community.
- *Abutting Land Uses.* The facility is abutted to the north and east by Forest Road, to the south by Route 2, and to the west by town owned property. A private residential parcel abuts the landfill parcel to the southeast. The location of the abutting parcels is indicated on the attached site plan.
- *Endangered Species.* The Town reviewed the Estimated Habitats of Rare Wildlife and Certified Vernal Pools maps in the vicinity of the former landfill site. According to the 2003 maps, there are no estimated habitats or vernal pools within ½ mile of the former landfill site.
- *Utilities.* The facility is serviced by 3-phase high-voltage electric, telephone, and town water. The selected firm shall be responsible for the payments of all utilities used by their facility as well as the costs associated with extending the utilities onto the site.

1.4 General Requirements

The selected firm shall also conform to the following miscellaneous requirements:

- *Contract.* The selected firm shall execute a contract (Contract) with the Board of Selectmen, which shall include without limitation provisions identical or substantially similar to the provisions set forth in this RFP.
- *Indemnification.* The selected firm shall covenant and agree to pay any claim or to assume the defense of any action or suit brought against the Town of Acton and/or its agents, officers, employees, representatives, committees, boards and commissions and thereby to indemnify and save harmless the Town, its agents, officers, employees, representatives, committees, boards and commissions against

and from all claims, causes of action, suits, claims, demands whatsoever, in law or in equity, losses, costs, damages and liability of any kind arising from any act or omission of the firm, its agents, employees or subcontractors, in the performance of the Contract, including without limitation closing and capping of the Acton landfill and post-closure use of subject property.

- *Assignment of Contract.* The selected firm shall give its personal attention constantly to the faithful performance of the Contract work and shall keep said work under its personal control. The selected firm shall not assign the Contract or sublet it in whole or in part, or delegate any of the work to be performed to any other person, firm or corporation without the prior written consent of the Board of Selectmen. The selected firm shall not assign any monies due, or which become due to it under the Contract, without the prior written consent of the Board of Selectmen, which consent may be withheld for any reason.
- *Compliance with Laws and Regulations.* In the performance of the Contract, the selected firm and its employees and subcontractors shall at all times comply with all laws and regulations of the United States, the Commonwealth of Massachusetts, the By-Laws of the Town of Acton and the regulations of the Board of Health and Board of Selectmen, and Public Works Department of the Town of Acton as the same now are or as the same by amendment may from time to time be, so far as said laws, by-laws, and regulations pertain to the work to be performed under the Contract; and shall also comply with all applicable laws relating to minimum wages; including state prevailing wage rates for construction work; and working conditions of the firm's employees. The failure of any other person to comply with said laws, by-laws or regulations shall under no circumstances excuse the selected firm from performing its obligations as required in the Contract.
- *Financial Assurance for Closure.* A performance bond or other approvable financial assurance mechanism (FAM) in the amount necessary to close the proposed facility and comply with any regulatory requirements (post-closure) shall be provided as part of the security for the selected firm's obligations under the Contract. The FAM shall be provided for the benefit of the DEP by a surety company authorized to do business in the Commonwealth of Massachusetts. The performance bond or other mechanism shall be the same as the FAM required by the DEP's solid waste regulations. The amount of the bond and the surety company shall be submitted to and be satisfactory to the Board of Selectmen prior to submittal for approval to the DEP. The selected firm shall maintain the FAM throughout the term of any Contract and any extension or renewal thereof. Notwithstanding any other provisions of this RFP, the selected firm shall not be permitted to deliver any fill, equipment or materials to the subject property or to do any work under the contract unless the Board of Selectmen has received a copy of the FAM documentation that complies with this RFP and the Contract between the Town and the selected firm, and with the DEP requirements.
- *Financial Guarantee.* Prior to commencement of the work and as security for the selected firm's covenants and obligations under the Contract, the selected firm shall provide and maintain during the term of the Contract for the benefit of the Town (i) a standby letter of credit, or (ii) a payment bond, or (iii) other financial guarantee in form and substance and issued by an institution licensed to conduct

business in the Commonwealth of Massachusetts and acceptable to and approved by the Board of Selectmen.

- *Permitting.* The selected firm shall be responsible for obtaining all federal, state and local permits for the proposed facility. The selected firm shall be responsible for all costs associated with the permitting process. The Town shall assist the selected firm by attending meetings, hearings and presentations on permit submittals, at the request of the selected firm. The selected firm shall closely coordinate any submittal with the DEP, Massachusetts Environmental Policy Act office, and other regulatory agencies. The selected firm shall be required to submit three draft copies of any permit applications or filings to the Town a minimum of fifteen business days in advance of their scheduled submission to the appropriate regulatory agency. The selected firm shall incorporate comments from the Town into the draft permit applications prior to their submittal to the regulatory agencies.
- *Submittal of Final Site Layout.* The selected firm shall submit to the Town, within sixty days of authorization from the Town, a final site plan and layout. This submittal shall include a topographic plan of the site after construction, proposed site improvements and utilities, proposed stormwater drainage systems, proposed haul routes, schedule for construction activities, and mitigation measures for any potential nuisance conditions including, but not limited to noise, dust and odors both during and after construction.
- *Insurance Requirements.* The selected firm shall take out and maintain, during the term of the Contract, the following insurance with companies that are duly authorized and licensed in the Commonwealth of Massachusetts to issue policies for the coverages and limits so required, and in forms acceptable to the Board of Selectmen to protect the selected firm performing work required by the Contract, the selected firm's subcontractors, and the Town of Acton and its boards, commissions, committees, officers, employees, agents and representatives, from all claims, liability and damages which may arise under the Contract, including without limitation, from all claims and liability for damages for bodily injury, for accidental death, for property damage, and for environmental pollution liability.

The Town and the selected firm intend that the Town, its employees, agents and officials, the selected firm and the selected firm's subcontractors and all other persons or entities identified in the Contract to be listed as insureds or additional insureds in such policies and will provide primary coverage for all losses and damages which may arise out of or result from the selected firm's performance and furnishing of work and the selected firm's other obligations under the Contract, whether it is to be performed or furnished by the selected firm, any subcontractor or supplier, or by anyone directly or indirectly employed by any of them to perform or furnish any of the work, or by anyone for whose acts any of them may be liable. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder.

The selected firm shall secure and continuously maintain in full force and effect during the term of the Contract insurance coverage as follows:

- a. Workers' Compensation, occupational disease, employer's liability, disability benefit and other similar employee disability insurance as required by the laws of the Commonwealth of Massachusetts;
- b. Commercial General Liability, combined single limit of \$5,000,000 each occurrence and \$5,000,000 aggregate limit. The Commercial General Liability insurance shall be issued under a broad form endorsement and shall include coverage for premises operations liability, products completed operations liability, contractor's protective liability, and contractual liability;
- c. Excess Liability Umbrella, \$10,000,000 each occurrence and \$10,000,000 aggregate limit. Excess liability umbrella insurance shall be in a form which shall provide coverage over commercial general liability, employer's liability under Workers' Compensation, and automobile liability insurance;
- d. Contractors' Operations and Professional Services Environmental Liability insurance on a claims-made basis with limits of \$5,000,000 for each occurrence and \$5,000,000 aggregate limit;
- e. Automobile Liability, combined single limit of \$1,000,000 each occurrence and \$3,000,000 aggregate limit; and
- f. Fire and Extended Coverage insurance for the work under the Contract to the full insurable value thereof for the benefit of the Town of Acton, the selected firm and the selected firm's Subcontractors, as their interests may appear.

Completed operations insurance, and any insurance coverage written on a claims - made basis shall remain in effect for at least two years after the work has been accepted by the Town (and the selected firm shall furnish the Town and each additional insured identified in the Contract to whom a certificate of insurance has been issued evidence satisfactory to the Town and any such additional insured of continuation of such insurance at the time of acceptance of the work and two years thereafter).

The selected firm also shall purchase and maintain property insurance upon all work at the site in the amount of the full replacement cost thereof. This insurance shall:

- a. include the interests of the Town, the selected firm and the selected firm's subcontractors, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;
- b. be written on a special form Builder's Risk "all risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the work, temporary buildings, false work and work in transit and shall insure against at least the following perils; fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris

removal, demolition occasioned by enforcement of laws and regulations, water damage, and such other perils as may be specifically required by the Contract;

- c. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
- d. equipment stored at the site or at another location that was agreed to in writing by the Town prior to being incorporated in the work, provided that the selected firm shall be responsible for all materials until the work is accepted by the Town; and
- e. be maintained in effect until the Work is accepted by the Town unless otherwise agreed to in writing by the Town and the selected firm with thirty (30) days written notice to each other additional insured to whom a certificate of insurance has been issued.

Each policy of liability insurance shall name the Town of Acton, the selected firm and the selected firm's subcontractors, all of whom shall be listed as additional insureds, and include coverage for the respective officers and employees of all such additional insureds. Each policy of insurance, and the certificate or other evidence thereof, required to be purchased and maintained by the selected firm in accordance with the Contract shall contain a provision or endorsement that the coverage afforded will not be cancelled or materially amended and no renewal will be refused until at least thirty (30) days prior written notice has been given to all insureds under each such policy. Failure to provide and continue in force such insurance shall constitute a material breach of the Contract and shall be grounds for immediate termination thereof by and in the sole discretion of the Town.

The selected firm shall make no claim against the Town of Acton or its boards, commissions, committees, officers, employees, agents and representatives for damage to the selected firm's trucks or equipment arising out of the work to be performed by the selected firm under the Contract, or for damage to any Town of Acton roads arising out of the work to be performed by the selected firm under the Contract. The selected firm shall provide and maintain appropriate liability insurance and bonds or other surety to provide protection against such damage.

Section 2

Evaluation Criteria and Proposal Requirements

The Town of Acton, Massachusetts (the “Town”) acting through its Board of Selectmen is soliciting proposals from qualified real-estate developers and or end users for the lease or purchase and development of the **Acton Business Center**. Acceptable uses for the property will be offices, wholesale or retail, outlets, hotel, research and development, bio-tech, or other similar uses.

As a condition of the lease or sale of this former landfill site, the selected developer shall conduct environmental assessments, design, permit, and construct a landfill cap that meets the requirements of 310 CMR 19.000 and earns the approval of the Massachusetts Department of Environmental Protection (DEP). The selected firm will be responsible for all aspects of the capping project and all costs will be borne by the selected bidder (see Section 1.4 for further details), including post-closure monitoring over the course of the lease.

2.1 Proposal Requirements

This section outlines the requirements for the proposals to be submitted for the lease or sale of the property to accommodate the future **Acton Business Center** site as well as the criteria that will be utilized to evaluate the proposals received.

The selection of a firm to lease or purchase the property will be based on an evaluation of the following criteria:

1. *Financial Benefits Proposal.* The Town intends to evaluate proposal to determine the net present value of each proposal. The financial benefits proposal will also be evaluated based on the proposed use of the site.

Financial benefits proposals will be submitted in a separate envelope as discussed in Section 1.1.

The financial benefits proposal shall include all costs related to the assessment, design, permitting and construction of the proposed facility in accordance with the DEP’s Solid Waste Management Regulations (310 CMR 19.000). Developers are required to provide the Town with a detailed description of the following:

- *Avoided Costs.* This shall include any costs estimated that the Town does not need to pay for capping the landfill or leasehold improvements. This present value may be adjusted by the Town, at its sole discretion, to reflect the Town's estimate of the avoided costs for each item.
- *Revenues.* Developers shall provide a summary of guaranteed and potential revenues to the Town that is incorporated into their proposals. These revenues

may include Offers to Purchase, lump sum payments, and/or annual payments, payment in-lieu of taxes or any other revenue stream that the developer may offer. The developer may utilize a combination of various revenue structures as required to develop the most advantageous proposal for the Town. The basis for estimating the revenues as well as minimum payments shall be included with the proposals.

The selected firm will be required to provide an audited annual statement of all revenues of the selected firm which will be the basis, in whole or in part, for any revenue or benefit to be realized by the Town from a contract between the Town and the selected developer.

Developers shall be required to provide an estimate of cash flow to the Town throughout the life of the lease or sale. This cash flow shall include a clear concise statement of the assumptions made in developing the model.

- While firms do not need to provide a specific breakdown of information on these items, the avoided costs and future revenues shall be net of the following items:
 1. Costs for operation of the proposed use including but not limited to the costs for all utilities, staffing, materials, equipment, maintenance, environmental monitoring; and
 2. Costs for design, permitting and construction of the proposed facility;

For all other sources of revenue, firms shall include a detailed plan that addresses the proposed methods of receiving such income, any contingencies or assumptions and expected schedule for payments. Firms shall also outline any limitations and assumptions on development costs to include construction, engineering and environmental remediation requirements.

- Firms shall provide a complete history and financial backgrounds of all institutions, corporations, etc. providing funds to the project.
2. *Technical Proposal.* The Town will review the proposed facility on the leased or purchased property. Impacts evaluated shall include the following items that will be utilized to prepare a technical ranking of the project as outlined in section 2.6:
 - *General Operations Information.* The developer shall provide a narrative description of the proposed facility, a conceptual site plan for the facility on the leased or purchased property, a discussion of setbacks from property lines, average daily and maximum traffic flows, and any other relevant information that would assist the Town in any preliminary presentation of the proposal to the public and regulatory agencies. The level of detail for the plans shall be adequate for the Town to evaluate the overall design as well as identify the

aerial limits and environmental impacts from the proposed use. At a minimum, these plans shall include a site location plan indicating general site grades, site access plan, and any details required to evaluate environmental impacts.

- *Permitting Approach.* The developer shall provide a brief narrative discussion of the permitting approach for the facility including any federal, state and local requirements. The proposal shall review the existing permits for the landfill site and the proposed leased property and provide a discussion of the impact of their proposed facility on any existing conditions. This discussion shall include a specific approach to modifying these permits to accommodate the proposed facility.
- *Mitigation Measures and Buffers.* The proposed project must comply with all regulatory requirements related to the design, operation and permitting of solid waste management facilities including mitigation of nuisance conditions such as noise, dust, odors; stormwater management; traffic and access; and aesthetics. The proposal shall provide a specific discussion of the measures to be taken to control these issues and any others that the facility may generate. The discussion shall include the specific measures and provide examples of their use at other locations.
- *Traffic and Operational Hours.* The proposal shall provide an estimate of the type and quantity of traffic will use the site. The proposal shall provide a statement of the anticipated hours that traffic is anticipated materials will be accepted at the facility as well as the hours of operations. The proposal shall also state the likely breakdown of traffic from direction and specific communities.
- *Compatibility with Landfill.* The proposal shall include a specific discussion of the compatibility of the proposed facility with the former landfill operation.
- *Schedule.* The developer will be required to provide a detailed schedule for obtaining all required permits and construction of the new facility. The proposed approach and schedule will be evaluated by the Town to determine if the proposed project is feasible. The Town may, at its sole discretion, reject proposals deemed to be not feasible due to the schedule and permitting requirements.
- *Experience and qualifications.* The developer will be required to submit relevant experience and qualifications with references with their technical proposals. All experience and qualifications information shall be for new business developments. Each facility referenced shall include an individual or local municipal official and state regulatory official that the Town can contact to discuss the facility and its development.

The firm shall also provide a discussion of the enforcement history for all developments completed in the past 5 years. The developer shall provide a minimum of five references for facilities located inside of Massachusetts.

The developer shall also provide information on any contracts awarded to them over the past five years that were not completed.

It should be noted that the Town may evaluate developers and contact individuals other than those provided to ascertain the status of existing developments and their compliance history.

In addition to the information to be provided for review by the Town as outlined above, all technical proposals shall include detailed specific information on the following:

- *Outline of Town Responsibilities.* Developers shall provide a detailed discussion of the work required by and responsibilities of the Town to complete the project.
- *Identification of Developer.* The developer shall identify itself by name, including without limitation corporate name or partnership name, if applicable, officers, directors, or partners of the developer; any other person or entity with a direct or beneficial interest in the subject property or the work to be done by or on behalf of the developer; and joint ventures, subcontractors or other entities associated with the project.
- *Conflict of Interest.* The developer shall provide a statement that they have no conflicts of interest with implementing the proposed project.
- *Exceptions.* The developer shall outline any exceptions to the requirements of this RFP.

This information will not be evaluated as part of the ranking criteria. However, the Town reserves the right to reject a proposal based on the information provided.

After proposals are received by the Town, they shall be reviewed by the Selection Committee. The Town may request interviews with any or all developers and make requests for additional information or clarifications on the proposals as appropriate. The Town will rank the proposals based on the criteria outlined in this Section and make a recommendation to the Town as to a preferred developer.

The Town reserves the right to waive any informality on or reject any or all proposals or select a firm if deemed to be in the best interests of the Town.

2.2 Financial Benefits Proposal Review Methodology

Cost criteria will be worth a total of 70 points in the ranking process. The Financial Benefits proposal Submissions will be evaluated based on a "Present Value" in 2004 dollars of the total submitted over the life of the lease. This Present Value of any proposal will be determined based on the following assumptions:

Normalizing Interest Rate	8.0%
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Any revenues received as part of the proposal will be evaluated as part of the Present Value of the cost evaluation. Avoided costs for site maintenance and monitoring will also be incorporated into the evaluation.

The Town will evaluate the risk basis for the financial benefits proposal. The Town will review the guaranteed portions of the proposal and assign a specific present value to the guaranteed portions and a separate present value to the variable or "at-risk" portion of the proposal. The Town may, at its discretion, discount the "at-risk" portion of the proposal based on its evaluation of the proposal and its viability.

Financial Benefits Proposals will be evaluated for reasonableness and considered "Unacceptable" if the Town determines that the information provided is not accurate, or that in the opinion of the Town, adequate funding will not be available to implement the proposed facility.

2.3 Financial Benefits Proposal Points Assignment

Points for the Financial Benefits Proposals will be assigned as follows:

1. The developer with the highest Present Value after the at-risk evaluation is completed in 2004 dollars will be assigned all 70 of the points.
2. Each subsequent developer will be assigned proportionally - a lower amount of points based on dividing the Present Value by the Highest Present Value and multiplying the result by 70 points.

Example: The Town receives three proposals from firms A, B and C with Present Values calculated as \$8,000,000, \$10,000,000, and \$6,000,000, respectively.

Developer B has the highest Present Value and would receive all 70 points. Developer A has the second highest proposal and would receive a total of 56 points (e.g. \$8,000,000 divided by \$10,000,000 times 70 points).

Developer C has the lowest Present Value and would receive 42 points (e.g. \$6,000,000 divided by \$10,000,000 times 70 points).

2.4 Technical Proposal Points Assignment

Developers shall not incorporate financial benefits proposal information into the technical proposal portion of the submission as they will be reviewed separately. The technical proposal shall be worth a maximum of 70 points in the ranking process. The following ranking will be applied to each proposal received:

General Operations Information

<u>Ranking</u>	<u>Points</u>	<u>Basis</u>
Highly Advantageous	10	The information provided clearly demonstrates that the facility adequately fits within the proposed lease limits or conditions of sale. The facility can be easily accommodated into the existing operation at the abutting DPW facility and future stormwater handling requirements.
Advantageous	7	The information provided demonstrates that the facility adequately fits within the proposed lease limits or conditions of sale. However, the Town will need to make accommodations for environmental impacts, stormwater controls or the existing operation at the abutting DPW facility to fully accommodate the proposed facility.
Not Advantageous	0	The information provided does not clearly demonstrate that the facility fits within the proposed lease limits or the information is provided incomplete.

Permitting Approach

<u>Ranking</u>	<u>Points</u>	<u>Basis</u>
Highly advantageous	10	Project approach including permitting is viable. Technology has been successfully applied elsewhere in Massachusetts.
Advantageous	7	Project approach including permitting is viable. Technology has been successfully applied elsewhere but not in Massachusetts.

Unacceptable	0	Project approach does not demonstrate the viability of the proposed facility obtaining permits.
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Mitigation Measures and Buffers

Highly Advantageous	10	Proposal clearly demonstrates that proposed mitigation measures for potential environmental impacts are acceptable and have been successfully implemented at similar development projects located upon former solid waste facilities. Mitigation measures will meet all regulatory thresholds and minimize the impacts of the proposed facility on the Town.
Advantageous	5	Proposal includes mitigation measures that will fully address all potential environmental impacts but the proposed measures have not been successfully implemented at former solid waste facilities.
Unacceptable	0	Proposal does not adequately describe proposed mitigation measures or proposes measures that will be ineffective in mitigating off-site environmental issues.

Traffic and Operational Hours

<u>Ranking</u>	<u>Points</u>	<u>Basis</u>
Highly Advantageous	10	Traffic impacts from the proposed facility will not interfere with ongoing Town operations at the DPW facility and/or will improve traffic flows on Route 2.
Advantageous	5	Traffic impacts from the proposed facility will be outside of the existing DPW operations and/or will have little of no impact on traffic flows on Route 2.
Unacceptable	0	Traffic to the proposed facility will interfere with the DPW operations and/or negatively impact traffic flows on Route 2.

Compatibility with Landfill

Highly advantageous	10	Proposal will provide a guaranteed stream of revenues to sustain the proposed development and ensure the capping of the landfill.
Advantageous	8	Proposal will provide a non-guaranteed stream of revenues to sustain the proposed development and ensure the capping of the landfill.
Acceptable	5	Proposal does not provide suitable revenue stream to sustain the proposed development and ensure the capping of the landfill.
Unacceptable	0	Proposal does not provide for or address the capping of the landfill.

Schedule

<u>Ranking</u>	<u>Points</u>	<u>Basis</u>
Highly Advantageous	10	Proposal demonstrates that the project can be implemented within 24 months of finalizing a lease (or sales) agreement between the Town and the selected developer.
Advantageous	5	Proposal demonstrates that the project can be implemented within 36 months of finalizing a lease (or sales) agreement between the Town and the selected developer.
Unacceptable	0	Proposal demonstrates that the facility cannot be implemented within 36 months of finalizing a lease (or sales) agreement between the Town and the selected developer.

Experience and Qualifications

<u>Ranking</u>	<u>Points</u>	<u>Basis</u>
Highly advantageous	10	Developer has experience with design and construction techniques on former landfill sites and has completed the development of at least three facilities of similar size. Developer has provided three positive references from

		individuals and municipal and regulatory officials and has a good record of compliance with environmental regulations.
Advantageous	5	Developer has experience with at least one similar type and magnitude project, has provided three positive references from individuals and municipal and regulatory officials and has a good record of compliance with environmental regulations.
Unacceptable	0	Developer has no experience with design and construction on former landfill sites and/or provides poor references from individuals and municipal and regulatory officials or has a poor record of compliance with environmental regulations as determined by the Town or Developer failed to implement a project awarded to it within the last five years.

A ranking of Unacceptable on the Experience and Qualifications section will be cause for the rejection of the proposal by the Town.

2.5 Document Submission Requirements

Technical Proposal

The following documents must accompany the Technical Proposal. Failure to provide any of the requested documents may result in the determination that the Proposer is non-responsive:

1. Proposal Form (for Purchase or Lease as Applicable) executed by a duly authorized representative of the Proposer,
2. Disclosure of Beneficial Interest Form executed by a duly authorized representative of the Proposer,
3. Certificate of Payment of Taxes executed by a duly authorized representative of the Proposer,
4. Certificate of Non-collusion executed by a duly authorized representative of the Proposer,
5. A copy of Proposer's most recent audited annual financial statements,
6. A description of Proposer's technical expertise and capabilities pertinent to this project, including a list of Proposer's professional licenses, accreditations, a summary of Proposer's direct experience with similar projects including a description of Proposer's business, and a description its development and operation similar like projects,
7. A list of three references pertinent to the Proposer's performance and experience, including contact name and telephone number. The Town may contact these references in determining whether the Proposer is responsible,
8. The Proposer's overall Technical Proposal including without limitation its General Operations Information, Permitting Approach, Mitigation Measures and Buffers, Traffic and Operational Hours, Compatibility with Landfill, Schedule for the Completion of the Leasehold Improvements, Proposed Outline of Town Responsibilities, Conflict of Interest, and any Exceptions to the Town's Lease or RFP Requirements, and
9. The Proposer's overall plan for the operation of the proposed facility.

Financial Benefits Proposal

The following documents must accompany the Financial Benefits proposal. Failure to provide any of the requested documents may result in the determination that the Proposer is non-responsive:

Detailed Financial Benefits Proposal Form (for Purchase or Lease as Applicable), executed by a duly authorized representative of the Proposer.

TECHNICAL PROPOSAL FORM
Lease of Municipal Real Estate
Transfer Station and Related Facilities

TOWN OF ACTON
Town Offices
472 Main Street
Acton, Massachusetts 01720

1. Name of Person or Business Submitting Proposal:

Address:

2. Please check off one of the following:

() If a corporation, State of Incorporation:

() If a partnership, names of partners:

() Individual

() Other: _____

Signature

Name of Person Signing

Title

Name of Business

Address

Federal Identification Number

DISCLOSURE OF BENEFICIAL INTERESTS IN REAL PROPERTY TRANSACTION

This form contains a disclosure of the names and addresses of all persons with a direct or indirect beneficial interest in the real estate transaction described below. This form must be filed with the Massachusetts Division of Capital Planning and Operations, as required by M.G.L. c.7, § 40J, prior to the conveyance of or execution of a lease for the real property described below. Attach additional sheets if necessary.

1. Public agency (as defined in G.L. c.7, § 39A) involved in this transaction:

2. Complete legal description of the property:

3. Type of Transaction: ☐ Sale ☐ Lease or rental for [term]

4. Seller(s) or Lessor(s):
Purchaser(s) or Lessee(s):

5. Names and addresses of all persons who have or will have a direct or indirect beneficial interest in the real property described above. Note: If a corporation has, or will have a direct or indirect beneficial interest in the real property, the names of all stockholders must also be listed except that, if the stock of the corporation is listed for sale to the general public, the name of any person holding less than ten percent of the outstanding voting shares need **not** be disclosed.

Name

Address

5. Continued

None of the persons listed in this section is an official elected to public office in the Commonwealth of Massachusetts except as noted below:

Name

Title or position

6. This section must be signed by the individual(s) or organizations(s) entering into this real property transaction with the public agency named in item 1. If this form is signed on behalf of a corporation, it must be signed by a duly authorized officer of that corporation.

The undersigned acknowledges that any changes or additions to item 4 of this form during the term of any lease or rental will require filing a new disclosure with the Division of Capital Planning and Operations within 30 days following the change or addition.

The undersigned swears under the pains and penalties of perjury that this form is complete and accurate in all respects.

Signature: _____

Date: _____

CERTIFICATE OF PAYMENT OF TAXES BY CONTRACTOR

Pursuant to G.L. C.62C, §49A, I, _____

herby certify under the pains and penalties of perjury that _____

("Contractor") has complied with all laws of the Commonwealth of Massachusetts relating to the payment of taxes, has filed all state tax returns and paid all State taxes required under law, has complied with all Massachusetts laws relating to tax reporting as to employees and contractors, and has complied with all Massachusetts laws relating to withholding and remitting of taxes, and has paid all Massachusetts state taxes required under law.

Date

Signature of Authorized
Representative Contractor

Social Security Number
or Federal Identification Number

Title

CERTIFICATE OF NON-COLLUSION

State of _____) ss.

County of _____)

_____ being first duly sworn,
deposes and says that:

(1) He is the _____, of
(Owner, Partner, Officer, Representative or Agent)

_____, the Bidder that has submitted the attached
Bid;

(2) He is fully informed respecting the preparation and contents of the attached
Bid and of all pertinent circumstances respecting such Bid;

(3) Such Bid is genuine and is not a collusive or sham Bid;

(4) Neither the said Bidder nor any of its officers, partners, owners, agents,
representatives, employees or parties in interest, including this affiant, have
in any way colluded, conspired, connived or agreed, directly or indirectly,
with any other Bidder, firm, or person to submit a collusive or sham Bid in
connection with the Work for which the attached Bid has been submitted; or
to refrain from bidding in connection with such Work; or have in any
manner, directly or indirectly, sought by agreement or collusion, or
communication, or conference with any Bidder, firm, or person to fix the
price or prices in the attached Bid or of any other Bidder, or to fix any
overhead, profit, or cost elements of the Bid price or the Bid price of any
other Bidder, or to secure through any collusion, conspiracy, connivance, or
unlawful agreement any advantage against (Recipient), or any person
interested in the proposed Work;

(5) The price or prices quoted in the attached Bid are fair and proper and are not
tainted by any collusion, conspiracy, connivance, or unlawful agreement on
the part of the Bidder or any other of its agents, representatives, owners,
employees or parties in interest, including this affiant.

BY _____

(Title)

On this __ day of _____, 200_, before me, the undersigned Notary Public, personally appeared _____, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding document, and being duly sworn acknowledged to me that he signed it voluntarily and under oath, on behalf of _____, the Contractor herein.

_____(official signature and seal of notary)

My commission expires _____

FINANCIAL BENEFITS PROPOSAL FORM
ACTON BUSINESS CENTER LEASE

THIS PROPOSAL IS SUBMITTED BY:

**LOCATION: TRANSFER STATION AND LANDFILL
PROPERTY, ACTON, MA**

THIS PROPOSAL IS SUBMITTED TO:

Don P. Johnson
Town Manager
Town Hall
472 Main Street
Acton MA 01720
("Town")

1. The undersigned Proposer proposes and agrees, if this Proposal is accepted, (a) to enter into a lease with the Town of Acton, substantially in the form included in the RFP Documents, of (i) approximately 17.75 acres of land located off Route 2, in the Town of Acton in the County of Middlesex, Commonwealth of Massachusetts, shown as Lot 2 on a plan entitled "Acton Business Center Development Site Without Transfer Station, Conceptual Plan" prepared by the Acton Engineering Department, dated 10/4/04, scale 1" = 60', subject to the Town's reserved easements for access, ramps, service roads, and drainage as shown on said plan, and (ii)) approximately 3.48 acres of land located off Route 2, in the Town of Acton in the County of Middlesex, Commonwealth of Massachusetts, shown as Lot 3 on said plan; (b) to perform and complete specific improvements to the Property as specified in the RFP consisting *inter alia* the closure/capping of the landfill all in accordance with all applicable requirements of the Department of Environmental Protection, the United States Environmental Protection Agency, and the Town (including the landfill on Lots 2 and 3 and on any portion of Lot 1 on said plan as may have been affected by historic landfill disposal activities); and upon completion of the mandatory leasehold improvements required by the RFP and acceptance thereof by the Town, to forthwith release and re-convey to the Town (on terms acceptable to the Town's Board of Selectmen) all of the Proposer's right, title and interest in Lot 3 as shown on said plan.
2. The undersigned Proposer accepts all of the terms and conditions in the RFP Documents, except as otherwise specifically stated in its Response to the RFP.

3. This Proposal shall remain subject to acceptance by the Town to and including September 30, 2005.
4. In submitting this Proposal, the undersigned Proposer represents, as more fully set forth in the Agreement that:
 - (a) Proposer has examined copies of all the RFP Documents and of the following Addenda (receipt of all which is hereby acknowledged):

Addenda Numbered
 - (b) Proposer has familiarized itself with the nature and extent of the RFP Documents, the proposed work and required improvements, the Property, the locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the work and/or the required improvements.
 - (c) Proposer has given the Town written notice of all conflicts, errors or discrepancies that it has discovered in the RFP Documents and the written resolution thereof by Town is acceptable to Proposer.
 - (d) This Proposal is genuine and not made in the interest of or on behalf of any non-disclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Proposer has not directly or indirectly induced or solicited any other Proposer to submit a false or sham Proposal; Proposer has not solicited or induced any person, firm or corporation to refrain from RFP; and Proposer has not sought by collusion to obtain for itself any advantage over any other Proposer or over Town.
 - (e) The Proposer understands and accepts that the Town reserves the right to select whichever alternate is deemed in the best interest of the Town based on various criteria, including but not limited to cost considerations. As a result, the choice of alternative may determine the successful Proposer.
5. The undersigned Proposer proposes to provide the following consideration to the Town:

Guaranteed Revenues to the Town: Rent Proposal

The undersigned proposes to pay annual rent in the following amounts over the initial 50-year term of the Lease, over the two additional ten-year extensions terms at the Town's option (Years 51-60 and 61-70), and if the Lease is extended by the Town beyond 70-years, to increase the annual rent by a

percentage equal to the CPI over the Rent paid during the previous year, for each subsequent year of the Lease over the immediately preceding year:

YEAR	ANNUAL RENT
1	
2	
3	
4	
5	
6	
7	
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11	
12	
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57	
58	
59	
60	
61	
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64	
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66	
67	
68	
69	
70	
TOTAL (Years 1-70)	

Rent shall be paid monthly in advance unless otherwise agreed by the Town.

Additional Potential Revenues to the Town

In addition to the annual rent revenues, the Proposer proposes to pay to the Town during each year of the Lease the following type(s) of consideration in the following estimated amount(s) calculated based on the following criteria:

Type of Consideration	Estimated Annual Amount for Each Year of the Lease	Basis of Calculation
Lump sum payments		
Annual payments		
Payment in Lieu of Taxes		
Other Revenue		
Total:		

The foregoing consideration shall be paid semi-annually (on or before December 1 and June 1) for the preceding six months, unless otherwise agreed by the Town. If appropriate, the undersigned agrees that it will provide an audited annual statement of all such revenues, at its own cost, to the Town.

Avoided Costs to the Town

In addition to the annual rent and other revenues set forth above, the Proposer estimates that, if the Town accepts this Proposal, the Town will avoid the following costs that it would otherwise need to pay, calculated based on the following criteria:

Type of Avoided Cost	Estimated Amount of Avoided Cost	Basis of Calculation
Costs of Landfill Capping and Closure		
Costs of other Required Improvements		
Other Avoided Costs		
Total:		

6. The undersigned Proposer agrees that, if he is selected as the successful Proposer, he will within five (5) days (Saturdays, Sundays, and legal holidays excluded) after presentation thereof by Town, execute the Lease Agreement in accordance with the terms of this Proposal and furnish a performance bond and also a labor and materials or payment bond, each of a surety company qualified to do business under the laws of the Commonwealth of Massachusetts and satisfactory to Town and each in the sum of the contract price, the premiums for which are to be paid for by the successful Proposer and are included in the contract price.

7. The undersigned Proposer agrees that, if he is selected as the successful Proposer, he will within five (5) days (Saturdays, Sundays, and legal holidays excluded) after presentation thereof by Town, furnish a sufficient security conforming in all respects to General Laws Chapter 30, Sections 39A, for payment of all rental and transportation charges for the hire or use of dump trucks upon such contract, on a surety company qualified to do business under the laws of the Commonwealth of Massachusetts and satisfactory to Town and in the sum of the contract price, the premiums for which are to be paid for by the successful Proposer and are included in the contract price.
8. The undersigned Proposer further certifies under the penalties of perjury that its Proposal is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this paragraph the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.
9. The undersigned Proposer agrees that the required improvements will be completed and made ready for acceptance by the Town within the time frame specified in the RFP Documents.
10. The undersigned certifies that Proposer has examined and is fully familiar with all of the provisions of the Proposal Documents, Scope-of-Work, associated drawings, specifications, general instructions, and any addenda thereto, to include but not limited to information obtained from the Proposal walk; that Proposer has been provided the opportunity to visit the Property, as necessary, has satisfied itself with respect to the actual site conditions, the nature and location of the Work, means of approach, and general site conditions, storage facilities; that Proposer has carefully checked all the words and figures and all statements made in this proposal; and other matters which may affect the Work or the cost thereof. No plea of ignorance of conditions, or difficulties, or conditions that may be encountered, or of any other relevant matter concerning the work performed, or the execution of the work will be accepted as excuse for any failure or omission of the Work on the part of the Proposer to fulfill all requirements of the Agreement.
11. The undersigned hereby agrees on behalf of Proposer that the Town will not be responsible for any errors or omissions in this proposal and that he or she is authorized to bind Proposer to this proposal and to any Lease Agreement resulting therefrom.
12. Pursuant to M.G.L. c. 62C, Section 49A, the undersigned Proposer certifies under the penalties of perjury that Proposer, to its best knowledge and belief, have filed all State Tax Returns and paid all State Taxes required under Massachusetts General Law.

13. The undersigned further certifies under penalty of perjury that the said undersigned is not presently debarred from doing public construction work in the commonwealth under the provisions of section twenty-nine F of chapter twenty-nine, or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.
14. Communications concerning this Proposal shall be addressed to and as indicated below.

THIS PROPOSAL SUBMITTED ON _____ 20

By

(Signature of Person Authorized
to Sign)

(Name and Title)

By
(Corporation Name)

(State of Incorporation)

Corporate Seal

Attest
(Secretary)

Business Address:

Phone Number: ()

END OF LEASE PROPOSAL FORM

FINANCIAL BENEFITS PROPOSAL FORM
ACTON BUSINESS CENTER PURCHASE

THIS PROPOSAL IS SUBMITTED BY:

**LOCATION: TRANSFER STATION AND LANDFILL
PROPERTY, ACTON, MA**

THIS PROPOSAL IS SUBMITTED TO:

Don P. Johnson
Town Manager
Town Hall
472 Main Street
Acton MA 01720
("Town")

15. The undersigned Proposer proposes and agrees, if this Proposal is accepted, (a) to enter into a Purchase and Sale Agreement with the Town of Acton, substantially in the form included in the RFP Documents, for (i) approximately 17.75 acres of land located off Route 2, in the Town of Acton in the County of Middlesex, Commonwealth of Massachusetts, shown as Lot 2 on a plan entitled "Acton Business Center Development Site Without Transfer Station, Conceptual Plan" prepared by the Acton Engineering Department, dated 10/4/04, scale 1" = 60', subject to the Town's reserved easements for access, ramps, service roads, and drainage as shown on said plan, and (ii)) approximately 3.48 acres of land located off Route 2, in the Town of Acton in the County of Middlesex, Commonwealth of Massachusetts, shown as Lot 3 on said plan; (b) to perform and complete specific improvements to the Property as specified in the RFP consisting *inter alia* the closure/capping of the landfill all in accordance with all applicable requirements of the Department of Environmental Protection, the United States Environmental Protection Agency, and the Town (including the landfill on Lots 2 and 3 and on any portion of Lot 1 on said plan as may have been affected by historic landfill disposal activities); and upon completion of the mandatory improvements required by the RFP and acceptance thereof by the Town, to forthwith release and re-convey to the Town (for one dollar and on other terms acceptable to the Town's Board of Selectmen) all of the Proposer's right, title and interest in Lot 3 as shown on said plan. A duly authorized representative of the undersigned Proposer has executed the attached Offer to Purchase Real Estate (the "Executed Offer") to memorialize this offer.

16. The undersigned Proposer accepts all of the terms and conditions in the RFP Documents, except as otherwise specifically stated in its Response to the RFP.
17. This Proposal shall remain subject to acceptance by the Town to and including September 30, 2005.
18. In submitting this Proposal, the undersigned Proposer represents, as more fully set forth in the Agreement that:
 - (a) Proposer has examined copies of all the RFP Documents and of the following Addenda (receipt of all which is hereby acknowledged):

Addenda Numbered
 - (b) Proposer has familiarized itself with the nature and extent of the RFP Documents, the proposed work and required improvements, the Property, the locality, and all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance or furnishing of the work and/or the required improvements.
 - (c) Proposer has given the Town written notice of all conflicts, errors or discrepancies that it has discovered in the RFP Documents and the written resolution thereof by Town is acceptable to Proposer.
 - (d) This Proposal is genuine and not made in the interest of or on behalf of any non-disclosed person, firm or corporation and is not submitted in conformity with any agreement or rules of any group, association, organization or corporation; Proposer has not directly or indirectly induced or solicited any other Proposer to submit a false or sham Proposal; Proposer has not solicited or induced any person, firm or corporation to refrain from RFP; and Proposer has not sought by collusion to obtain for itself any advantage over any other Proposer or over Town.
 - (e) The Proposer understands and accepts that the Town reserves the right to select whichever alternate is deemed in the best interest of the Town based on various criteria, including but not limited to cost considerations. As a result, the choice of alternative may determine the successful Proposer.
19. The undersigned Proposer proposes to provide the following consideration to the Town:

Guaranteed Revenues to the Town: Price Proposal

The undersigned proposes to pay the purchase price set forth in the Executed Offer attached hereto

Additional Potential Revenues to the Town

In addition to the purchase price, the Proposer proposes to pay to the Town the following type(s) of consideration in the following estimated amount(s) calculated based on the following criteria:

Type of Consideration	Estimated Annual Amount	Basis of Calculation
Lump sum payments		
Annual payments		
Payment in Lieu of Taxes		
Other Revenue		
Total:		

The foregoing consideration shall be paid semi-annually (on or before December 1 and June 1) for the preceding six months, unless otherwise agreed by the Town. If appropriate, the undersigned agrees that it will provide an audited annual statement of all such revenues, at its own cost, to the Town.

Avoided Costs to the Town

In addition to the annual rent and other revenues set forth above, the Proposer estimates that, if the Town accepts this Proposal, the Town will avoid the following costs that it would otherwise need to pay, calculated based on the following criteria:

Type of Avoided Cost	Estimated Amount of Avoided Cost	Basis of Calculation
Costs of Landfill Capping and Closure		
Costs of other Required Improvements		
Other Avoided Costs		
Total:		

20. The undersigned Proposer agrees that, if he is selected as the successful Proposer, he will within five (5) days (Saturdays, Sundays, and legal holidays excluded) after presentation thereof by Town, execute the Purchase and Sale Agreement in accordance with the terms of this Proposal and furnish a performance bond and also a labor and materials or payment bond, each of a surety company qualified to do business under the laws of the Commonwealth of Massachusetts and satisfactory to Town and each in the sum of the estimated contract price for the landfill closure, the premiums for which are to be paid for by the successful Proposer.
21. The undersigned Proposer agrees that, if he is selected as the successful Proposer, he will within five (5) days (Saturdays, Sundays, and legal holidays excluded) after presentation thereof by Town, furnish a sufficient security conforming in all respects to General Laws Chapter 30, Sections 39A, for payment of all rental and transportation charges for the hire or use of dump trucks upon such contract for the landfill closure, on a surety company qualified to do business under the laws of the Commonwealth of Massachusetts and satisfactory to Town and in the sum of the contract price, the premiums for which are to be paid for by the successful Proposer.
22. The undersigned Proposer further certifies under the penalties of perjury that its Proposal is in all respects bona fide, fair and made without collusion or fraud with any other person. As used in this paragraph the word "person" shall mean any natural person, joint venture, partnership, corporation or other business or legal entity.
23. The undersigned Proposer agrees that the required improvements will be completed and made ready for acceptance by the Town within the time frame specified in the RFP Documents.
24. The undersigned certifies that Proposer has examined and is fully familiar with all of the provisions of the Proposal Documents, Scope-of-Work, associated drawings, specifications, general instructions, and any addenda thereto, to include but not limited to information obtained from the Proposal walk; that Proposer has been provided the opportunity to visit the Property, as necessary, has satisfied itself with respect to the actual site conditions, the nature and location of the Work, means of approach, and general site conditions, storage facilities; that Proposer has carefully checked all the words and figures and all statements made in this proposal; and other matters which may affect the Work or the cost thereof. No plea of ignorance of conditions, or difficulties, or conditions that may be encountered, or of any other relevant matter concerning the work performed, or the execution of the work will be accepted as excuse for any failure or omission of the Work on the part of the Proposer to fulfill all requirements of the Agreement.

25. The undersigned hereby agrees on behalf of Proposer that the Town will not be responsible for any errors or omissions in this proposal and that he or she is authorized to bind Proposer to this proposal and to any Purchase and Sale Agreement resulting therefrom.
26. Pursuant to M.G.L. c. 62C, Section 49A, the undersigned Proposer certifies under the penalties of perjury that Proposer, to its best knowledge and belief, have filed all State Tax Returns and paid all State Taxes required under Massachusetts General Law.
27. The undersigned further certifies under penalty of perjury that the said undersigned is not presently debarred from doing public construction work in the commonwealth under the provisions of section twenty-nine F of chapter twenty-nine, or any other applicable debarment provisions of any other chapter of the General Laws or any rule or regulation promulgated thereunder.
28. Communications concerning this Proposal shall be addressed to and as indicated below.

THIS PROPOSAL SUBMITTED ON _____ 20

By

(Signature of Person Authorized
to Sign)

(Name and Title)

By
(Corporation Name)

(State of Incorporation)
Corporate Seal

Attest
(Secretary)

Business Address:

Phone Number: ()

OFFER TO PURCHASE REAL ESTATE

Date: _____

To: Town of Acton, a municipal corporation with a principal place of business at Town Offices, 472 Main Street, Acton, MA 01720 hereinafter called the **Seller** or Town.

From: _____, a _____
corporation having a mailing address of _____ with a federal taxpayer ID number of _____ (hereinafter referred to as the **Buyer**).

The **Property** herein referred to is identified as follows: A certain parcel of land in Acton, Middlesex County, Massachusetts consisting of (i) approximately 17.75 acres of land located off Route 2 shown as Lot 2 on a plan entitled "Acton Business Center Development Site Without Transfer Station, Conceptual Plan" prepared by the Acton Engineering Department, dated 10/4/04, scale 1" = 60', attached hereto as **Exhibit A**, subject to the Town's reserved easements for access, ramps, service roads, and drainage as shown on said plan and to be described with particularity in the Seller's Deed to the Buyer, and (ii)) approximately 3.48 acres of land located off Route 2, in the Town of Acton in the County of Middlesex, Commonwealth of Massachusetts, shown as Lot 3 on said plan.

Special provisions (if any) re fixtures, appliances, etc.: No fixtures or appliances are included; the sale is land only.

Buyer hereby offers to buy said property, which has been offered for sale pursuant to a Request for Proposals dated _____, 2004, issued by the Town pursuant to M.G.L. c. 30B, § 16 (the "RFP").

Buyer offers to buy said property under the following terms and conditions:

1. Buyer will pay therefor \$ _____, of which:
2.
 - (a) \$ _____ is paid herewith as a Cash deposit to bind this Offer
 - (b) \$ _____ is to be paid as an additional deposit upon the execution of the Purchase and Sale Agreement provided for below.
 - (c) \$ _____ is to be paid at the time of delivery of the Deed in cash, or by certified, cashier's treasurer's or bank check(s).
 - (d) \$ _____
 - (e) \$ _____ Total Purchase Price

3. This Offer is good until 5:00 P.M. on September 30, 2005 at or before which time a copy hereof shall be signed by the Seller signifying acceptance of this Offer, and returned to Buyer forthwith, otherwise this Offer shall be considered as rejected and the money deposited herewith shall be returned to me forthwith.
4. The parties hereto shall, on or before October 31, 2005, at 5:00 P.M. execute the applicable form of Purchase and Sale Agreement attached to the RFP with such changes as may be agreed by the parties hereto and which, when executed, shall be the agreement between the parties hereto.
5. A good and sufficient Deed, conveying a good and clear record and marketable title shall be delivered at 12:00 Noon on _____ 2005, at the Board of Selectmen's Office, Town Offices, 472 Main Street, Acton, MA, unless otherwise agreed upon in writing, or unless such date is extended pursuant to the terms of the Agreement.
6. If Buyer does not fulfill its obligations under this Offer, the above-mentioned deposit shall forthwith become Seller's property without recourse to either party. Said deposit shall be held by _____ as escrow agent subject to the terms hereof, provided however that in the event of any disagreement between the parties, the escrow agent may retain said deposit pending instructions mutually given by the parties. A similar provision shall be included in the Purchase and Sale Agreement with respect to any deposits held under its terms.
7. Time is of the essence hereof.
8. Upon completion of the landfill cap and closure improvements specified in the RFP and acceptance thereof by the Seller, the Buyer shall forthwith cause to be paid all materialmen and others who performed work with respect thereto, shall forthwith cause to be discharged all liens with respect thereto, and shall release and re-convey to the Seller (for consideration of one dollar and on terms acceptable to the Board of Selectmen) all of the Seller's right, title and interest in Lot 3 as shown on the plan entitled "Acton Business Center Development Site Without Transfer Station, Conceptual Plan" prepared by the Acton Engineering Department, dated 10/4/04, scale 1" = 60', attached to **Exhibit A** hereto.

NOTICE: This is a legal document that creates binding obligations. If not understood, consult an attorney.

WITNESS our hands and seals.

Buyer:

SIGNED _____

Name:

Duly Authorized:

Address

Phone Numbers

This Offer is hereby accepted upon the foregoing terms and conditions at _____
A.M./P.M. on _____ 2005.

WITNESS our hands and seals.

SELLER:

TOWN OF ACTON

By its Board of Selectmen

F. Dore Hunter, Chairman

Peter K. Ashton

Walter Foster

Robert Johnson, Clerk

William H. Schupert

END OF PURCHASE AND SALE PROPOSAL FORM

Section Three:

Acton Assessor's Map G-4, Lots 75, 140, 76 and 167-1

This information is not available online, but can be viewed at the reference desk at the Acton Memorial Library.

Section Four:

Figure 1-1, Site Locus Map

This information is not available online, but can be viewed at the reference desk at the Acton Memorial Library.

Section Six:

AutoCAD File of Site Boundaries and Topography

This information is not available online, but can be viewed at the reference desk at the Acton Memorial Library.

Section Seven:

Figure 1-3, Conceptual Grading Plan

This information is not available online, but can be viewed at the reference desk at the Acton Memorial Library.

Section Eight:

Hydrology and Monitoring System Study and Results

This information is not available online, but can be viewed at the reference desk at the Acton Memorial Library.

Section Nine:

Site Assignment Documentation and Other Permits for the Transfer Station

This information is not available online, but can be viewed at the
reference desk at the Acton Memorial Library.

LEASE AGREEMENT

THIS LEASE AGREEMENT ("**Agreement**"), dated as of the last date of execution below, is entered into by the TOWN OF ACTON, a MUNICIPAL CORPORATION, having a mailing address of Town Hall, 472 Main Street, Acton, Massachusetts 01720 (hereinafter referred to as "**Landlord**") and

_____, a _____ having a mailing address of _____ with a federal taxpayer ID number of _____ (hereinafter referred to as "**Tenant**").

BACKGROUND

Landlord owns that certain tract of land, together with all rights and privileges arising in connection therewith, shown on Town of Acton Assessor's Map G-4, Lots 75, 140, 76, and 167-1, located off Route 2 in Acton, Massachusetts (the "**Property**"). Tenant desires to lease, develop and operate the Acton Business Center on a portion of the Property (the "**Acton Business Center**"). Landlord desires to lease to Tenant the right to develop and use a portion of the Property to operate the Acton Business Center in accordance with this Agreement.

For adequate consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

DEFINITIONS.

(a) "**CPI**" means the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), U.S. City Average, All Items (2004 = 100), seasonally adjusted, published by the United States Department of Labor, or if such index is no longer published or its method of computation is substantially modified, an index approved by Tenant and Landlord.

1. LEASE OF PREMISES; LEASEHOLD IMPROVEMENTS.

(a) Landlord leases to Tenant and Tenant leases from Landlord a certain portion of the Property, as described on attached **Exhibit 1**, together with unrestricted non-exclusive access for Tenant's uses from Route 2 West to the Acton Business Center as described on the attached **Exhibit 1** (collectively, the "**Premises**").

(b) The Landlord agrees to lease to Tenant and Tenant agrees to lease from Landlord the Premises under the terms and conditions set forth herein and in strict accordance with the Request for Proposals dated _____, prepared by Landlord (the "RFP") and the information provided by Tenant in its Proposal in response thereto (the "Bid") dated _____. The RFP and the Bid are each attached hereto as **Exhibits 2** and **3** respectively, and are made a part of this Agreement, subject to the condition that, in the event of a conflict in and between the terms of the RFP and the Bid, the terms of the RFP shall control and, in the event of a conflict in and between the RFP, the Bid and this Agreement, the terms of this Agreement shall control in each and every instance.

(c) The Tenant shall at its sole cost and expense perform and complete to the Landlord's reasonable satisfaction all design, permitting, environmental assessment, construction, landscaping and related activities for the following leasehold improvements to the Property within the time frames specified: (i) on or before the second anniversary of the Commencement Date set forth below, grading and shaping of the landfill for installation of a landfill cap described herein, (ii) on or before the fourth anniversary of the Commencement Date set forth below, closure of the entire landfill situated on Lots 2 and 3 on a plan entitled "Acton Business Center Development Site Without Transfer Station, Conceptual Plan" prepared by the Acton Engineering Department, dated 10/4/04, scale 1" = 60', attached to Exhibit 1 hereto (and any adjacent areas affected by landfill operations) by installation of a landfill cap that meets the requirements of the DEP's Solid Waste Management Regulations (310 CMR 19.000) for closure and capping of the existing solid waste landfill on the Property, that satisfies all applicable requirements of

the Landlord, the Department of Environmental Protection, and the United States Environmental Protection Agency, and that meets the specifications for landfill closure and capping set forth in **Exhibit 4** hereto. This obligation to perform and complete the leasehold improvements shall be specifically enforceable, and time is of the essence with respect thereto. Failure to complete said leasehold improvements required under the Agreement on or before that date shall be grounds to terminate the Agreement, in which case the Landlord may, without limitation of its other available remedies in law or in equity, cause the leasehold improvements to be completed by another person, firm, or corporation, and recover all costs thereof, including collection costs and attorneys fees, from the Tenant. Within sixty days of completion of leasehold improvements under this Agreement, the Tenant shall submit to the Landlord three sets of as built plans. All costs associated with the foregoing shall be borne by the Tenant.

(d) Upon completion of the leasehold improvements and acceptance thereof by the Landlord, the Tenant shall forthwith cause to be paid all materialmen and others who performed work with respect thereto, shall forthwith cause to be discharged all liens with respect thereto, and shall release and re-convey to the Landlord (on terms acceptable to the Board of Selectmen) all of the Tenant's right, title and interest in Lot 3 as shown on the plan entitled "Acton Business Center Development Site Without Transfer Station, Conceptual Plan" prepared by the Acton Engineering Department, dated 10/4/04, scale 1" = 60', attached to Exhibit 1 hereto.

2. PERMITTED USE.

(a) Tenant may use the Premises for the development, installation, construction, maintenance, operation, repair, replacement and upgrade of a new Acton Business Center consisting of offices, wholesale or retail space, outlets, hotel, research and development, bio-tech, or other similar uses (collectively, the "**Acton Business Center**"), as well as the right to test, survey and review title on the Property; Tenant further shall have the right and obligation to add, modify and/or replace buildings and improvements in order to be in compliance with any current and future federal, state or local laws, bylaws, rules statutes and regulations applicable to the Acton Business Center (collectively, the "**Permitted Use**"). Landlord and Tenant agree that the Acton Business Center is conceptually described on **Exhibit 1** and this description will not be deemed to limit Tenant's Permitted Use. Tenant has the right to operate the Acton Business Center and, subject to Landlord's review and approval, to make improvements, alterations, upgrades or additions appropriate for Tenant's use which improvements shall not interfere with the Landlord's remaining use of the Property ("**Tenant Changes**"). . Tenant agrees to comply with any and all current and future governmental laws, bylaws, rules, statutes and regulations, relating to its use of the Acton Business Center on the Property. Tenant shall have the right to modify, supplement, replace, upgrade, or expand the buildings and improvements at the Acton Business Center within the Premises at any time during the term of this Agreement. For purposes of this Agreement, Tenant will be allowed to make such alterations to the Property in order to accomplish Tenant's Changes or to insure that the Acton Business Center complies with all applicable federal, state or local laws, bylaws, statutes, rules or regulations. Any buildings and improvements constructed or installed on the Property, including without limitation, upgrades to existing buildings and improvements for the Acton Business Center, shall, in Landlord's sole discretion, become the property of Landlord at the expiration of this Agreement. Any buildings and improvements or fixtures Landlord does not elect to retain, shall be removed by Tenant in accordance with Section 13 of this Agreement.

(b) Prior to the construction or installation of any Tenant Changes, Tenant will supply Landlord with plans and specifications ("Plans") to be reviewed and approved in writing by the Landlord prior to commencement of Tenant's Changes. Landlord may approve, deny, or condition its approval of any such Plans as it deems appropriate. After approval by the Landlord, the Plans will be considered incorporated in this Agreement as Exhibit 1. If the Landlord disapproves the Plans then Tenant may provide Landlord with revised Plans in an effort to address Landlord's concerns. In the event Landlord disapproves of the Plans upon a third (3rd) submission, and Tenant's Changes are required to maintain any required permit, license, or other necessary approval, or are necessary to comply with any municipal, state, or federal law, bylaw, statute, or regulation, Tenant may, upon sixty days notice to Landlord and opportunity to cure by Landlord, terminate this Agreement in accordance with Section

6(c) of this Agreement. This paragraph shall not be construed to limit the number of times that Tenant may submit Plans for review. For each submission of Plans, Tenant shall reimburse Landlord its reasonable review fees as provided for in Section 8(b) of this Agreement.

3. **TERM.**

(a) The initial lease term will be fifty (50) years ("**Initial Term**"), commencing upon the Commencement Date, as defined below. The Initial Term will terminate on the last day of the month in which the fiftieth (50th) annual anniversary of the Commencement Date occurs.

(b) This Agreement shall automatically renew for two (2) additional ten (10) year term(s) (each ten (10) year term shall be defined as the "**Extension Term**"), upon the same terms and conditions, unless Tenant, in its sole discretion, notifies Landlord in writing of Tenant's intention not to renew this Agreement at least thirty (30) days prior to the expiration of the existing Term.

(c) If Tenant remains in possession of the Premises after the termination or expiration of this Agreement then Tenant will be deemed to be occupying the Premises on a month-to-month basis (the "**Holdover Term**"), subject to the terms and conditions of this Agreement.

(d) The Initial Term, the Extension Term and the Holdover Term are collectively referred to as the Term ("**Term**").

4. **RENT.**

(a) Commencing on the date that this Agreement is fully-executed (the "**Commencement Date**") and continuing throughout the Initial Term (years 1-50), the first Extension Term (years 51-60), and the Second Extension Term (years 61-70), Tenant will pay the Landlord a monthly rental payment in accordance with the following schedule of rent ("**Rent**"), at the address set forth above on or before the fifth (5th) day of each calendar month in advance:

<u>YEAR</u>	<u>MONTHLY RENT</u>	<u>ANNUALIZED RENT</u>
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TOTAL (Years 1-70)		

Rent will be prorated for any partial month. The initial Rent payment will be forwarded by Tenant to Landlord within thirty (30) days after the Commencement Date.

(b) If the Lease is extended by the Town beyond 70-years, then throughout any Extension Terms after the second Extension Term set forth above, the Rent will increase by a percentage equal to the CPI over the Rent paid during the previous year.

(c) Tenant agrees to pay Landlord as “**Additional Rent**” the following: **[TO FOLLOW BASED ON PROPOSAL]**. Such Additional Rent shall be calculated and paid on a semi-annual basis as of the close of business on the last day of November and of May during each year of the Term, and shall be paid with the Rent due the following month.

(d) Rent for the **Holdover Term** shall be One Hundred Fifty percent (150%) of the then current Rent amount.

(e) Tenant will pay all real and personal property taxes or payments in lieu of taxes assessed on, or any portion of such taxes or payments in lieu of taxes directly attributable to the Acton Business Center. Tenant, upon presentation of sufficient and proper documentation will pay, within thirty (30) days, an increase in real property taxes or payments in lieu of taxes levied against the Property, excluding additional taxes that relate to the period prior to the Commencement Date which is attributable to Tenant’s use of the Property, provided Tenant will be entitled to seek an abatement of any such increase payable by it.

5. **OPERATIONS.**

(a) Operation of Acton Business Center. Tenant shall construct, operate and maintain the Acton Business Center in compliance with all federal, state and local laws now in force or hereafter in effect.

(b) Manner of Deliveries. Tenant shall impose reasonable regulations on all pick-ups and deliveries of any materials, products, and wastes to or from the Acton Business Center to insure that there is no disturbance to residential neighbors of the Acton Business Center between 9:00 p.m. and 7:00 a.m. Tenant may impose such other reasonable rules and regulations on the subtenants of the Acton Business Center as it deems necessary.

Tenant shall operate the Acton Business Center in such a manner as to reasonably ensure that truck queuing times are kept to a minimum. Tenant agrees to cooperate with the Landlord by implementing reasonable suggestions for the reduction of queuing times caused by circumstances outside of Tenant’s control.

(c) Liability for Costs. Tenant shall have full responsibility and liability for all expenses and costs incurred in connection with the design, construction, equipping, operation and maintenance, and possession of the Acton Business Center, including without limitation any capital costs, taxes, labor, materials, buildings and improvements and all other costs of constructing and operating the Acton Business Center.

(d) Rules and Regulations. Tenant will comply with all applicable laws, bylaws, statutes, rules and regulations for the Acton Business Center and the Property as may be established and provided by any federal, state or local governmental body from time to time, and shall apply for and use its best efforts to obtain any and all required approvals, licenses and permits from any agency, board, or other governmental authority necessary for the

construction or operation of the Acton Business Center. Tenant shall also comply with all applicable laws, bylaws, rules and regulations relating to minimum wages including without limitation state prevailing wage rates for construction work of the leasehold improvements; and working conditions on the Property. The failure of the Landlord or any other person to comply with said laws, bylaws, rules or regulations shall under no circumstances excuse the selected firm from performing its obligations as required in the Agreement. Attached hereto as **Exhibit 5** is a list of current prevailing wages for the work anticipated in connection with the anticipated leasehold improvements on the Property, which shall be updated from time to time during the Term of the Agreement. Tenant shall at its own cost be responsible for obtaining all federal, state and local permits for the proposed Acton Business Center and all operations permitted or required under the Agreement. The Tenant shall be responsible for all costs associated with the permitting process. The Tenant shall closely coordinate any submittal with the DEP, Massachusetts Environmental Policy Act office, and local authorities with the Landlord so as not to jeopardize other on-site Landlord operations on the Property. The Tenant shall submit three draft copies of any permit applications or filings to the Landlord a minimum of thirty (30) business days in advance of their scheduled submission to the appropriate regulatory agency. The selected firm shall incorporate comments from the Town into the draft permit applications prior to their submittal to the regulatory agencies.

6. TERMINATION. This Agreement may be terminated, without penalty or further liability, as follows:

- (a) by either party on thirty (30) days prior written notice, if the other party remains in default under Section 15 Default and Right to Cure of this Agreement after the applicable cure periods;
- (b) by Tenant upon written notice to Landlord, if Tenant is unable to obtain, or maintain, any required approval(s) or the issuance of a license or permit by any agency, board, court or other governmental authority necessary for the construction or operation of the Acton Business Center substantially as shown on Exhibit 1, subject to reasonable conditions of approval imposed by federal, state and local permitting authorities. . Tenant shall use its best efforts to obtain and maintain such licenses, permits, and approvals. However, Tenant's best efforts shall not require Tenant to appeal any adverse decision or determination; or
- (c) by Tenant on sixty (60) days prior written notice of the disapproval of Plans pursuant to Section 2(b) of this Agreement, so long as Tenant pays Landlord a termination fee equal to one (1) years Rent, at the then current rate.

7. INSURANCE. Tenant will carry during the Term, at its own cost and expense, the following insurance with companies that are duly authorized and licensed in the Commonwealth of Massachusetts to issue policies for the coverages and limits so required, and in forms acceptable to the Landlord's Board of Selectmen to protect the Tenant, the Tenant's subcontractors, and the Landlord and its boards, commissions, committees, officers, employees, agents and representatives, from and against any and all claims, liabilities and damages which may arise under the Agreement, including without limitation, any and all claims, liabilities and damages for bodily injury, for accidental death, for property damage, and for environmental pollution liability caused by the acts or omissions of the Tenant, its agents, officers employees, contractors, subcontractors, representatives, servants, and invitees, and their respective heirs, administrators, successors and assigns,.

The Tenant shall cause the Landlord and its employees, agents and officials, to be named as insureds or additional insureds in such policies and will provide primary coverage for all losses and damages which may arise out of or result from the Tenant's performance and furnishing of work and the Tenant's other obligations under the Agreement, whether it is to be performed or furnished by the Tenant, any contractor, subcontractor or supplier, or by anyone directly or indirectly employed by any of them to perform or furnish any of the work, or by anyone for whose acts any of them may be liable. All such policies shall contain provisions to the effect that in the event of

payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder.

The Tenant shall secure and continuously maintain in full force and effect during the Term of the Agreement insurance coverage as follows:

- a. Workers' Compensation, occupational disease, employer's liability, disability benefit and other similar employee disability insurance as required by the laws of the Commonwealth of Massachusetts;
- b. Commercial General Liability, combined single limit of \$5,000,000 each occurrence and \$5,000,000 aggregate limit. The Commercial General Liability insurance shall be issued under a broad form endorsement and shall include coverage for premises operations liability, products completed operations liability, contractor's protective liability, and contractual liability;
- c. Excess Liability Umbrella, \$10,000,000 each occurrence and \$10,000,000 aggregate limit. Excess liability umbrella insurance shall be in a form which shall provide coverage over commercial general liability, employer's liability under Workers' Compensation, and automobile liability insurance;
- d. Contractors' Operations and Professional Services Environmental Liability insurance on a claims-made basis with limits of \$5,000,000 for each occurrence and \$5,000,000 aggregate limit;
- e. Automobile Liability, combined single limit of \$1,000,000 each occurrence and \$3,000,000 aggregate limit; and
- f. Fire and Extended Coverage insurance for the work under the Agreement to the full insurable value thereof for the benefit of the Landlord, the Tenant and the Tenant's Subcontractors, as their interests may appear.

Completed operations insurance, and any insurance coverage written on a claims -made basis shall remain in effect for at least two years after the work has been accepted by the Landlord (and the Tenant shall furnish the Landlord and each additional insured identified in the Agreement to whom a certificate of insurance has been issued evidence satisfactory to the Landlord and any such additional insured of continuation of such insurance at the time of acceptance of the work and two years thereafter).

The Tenant also shall purchase and maintain property insurance upon all work at the Property in the amount of the full replacement cost thereof. This insurance shall:

- a. include the interests of the Landlord, the Tenant and the Tenant's subcontractors, each of whom is deemed to have an insurable interest and shall be listed as an insured or additional insured;
- b. be written on a special form Builder's Risk "all risk" or open peril or special causes of loss policy form that shall at least include insurance for physical loss or damage to the work, temporary buildings, false work and work in transit and shall insure against at least the following perils; fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of laws and regulations, water damage, and such other perils as may be specifically required by the Agreement;
- c. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);

- d. cover equipment stored at the site or at another location that was agreed to in writing by the Landlord prior to being incorporated in the work, provided that the Tenant shall be responsible for all materials until the work is accepted by the Landlord; and
- e. be maintained in effect until the Work is accepted by the Landlord unless otherwise agreed to in writing by the Landlord and the Tenant with thirty (30) days' written notice to each other additional insured to whom a certificate of insurance has been issued.

Each policy of liability insurance shall name the Landlord, the Tenant and the Tenant's subcontractors, all of whom shall be listed as additional insureds, and include coverage for the respective officers and employees of all such additional insureds. Each policy of insurance, and the certificates or other evidence thereof, required to be purchased and maintained by the Tenant in accordance with the Agreement shall contain a provision or endorsement that the coverage afforded will not be cancelled or materially amended and no renewal will be refused until at least thirty (30) days' prior written notice has been given to all insureds and additional insureds under each such policy. Failure to provide and continue in force such insurance shall constitute a material breach of the Agreement and shall be grounds for immediate termination thereof by and in the sole discretion of the Landlord.

The Tenant shall make no claim against the Landlord or its boards, commissions, committees, officers, employees, agents and representatives for damage to the Tenant's trucks or equipment arising out of the work to be performed by the Tenant under the Agreement, or for damage to or from any Town of Acton roads arising out of the work to be performed by the Tenant under the Agreement. The Tenant shall provide and maintain appropriate liability insurance and bonds or other surety to provide protection against such damage.

The coverage amounts provided for herein, shall escalate annually based upon the percentage increase in the Consumer Price Index beginning with the sixth anniversary of the Commencement Date and annually thereafter.

If Tenant fails to procure, maintain and/or pay any insurance required in this Section within ten (10) days after receipt of written notice from Landlord, or fails to carry insurance required by law or governmental regulation after notice and within the time periods so required, Landlord may (but without obligation to do so) at any time, from time to time, procure such insurance and pay the reasonable premiums therefor, in which event Tenant will repay to Landlord all such sums so paid by Landlord and any reasonable costs or expenses incurred by Landlord in connection therewith, within ten (10) days following Landlord's written request for such payment

8. SECURITY DEPOSIT AND REVIEW FEES.

(a) Tenant shall pay Landlord's reasonable legal and expert fees for the review of any proposed changes to this Agreement or the Acton Business Center upon reasonable proof of same.

(b) Promptly upon written demand, the Tenant shall pay to the Landlord all costs incurred by the Landlord in reviewing and approving any and each submitted Plan, including the costs of Landlord's architects, engineers, attorneys and/or consultants, provided the Tenant shall not be required to reimburse the Landlord an amount that exceeds two month's Rent per review. Such costs shall be incurred by the Tenant and be due the Landlord as Additional Rent under this Agreement.

(c) At the commencement of this Agreement, Tenant will deposit with Landlord the sum of _____ and No/100 Dollars (\$_____.00), a performance bond, or other approvable financial assurance mechanism (FAM) in the amount necessary to close the proposed existing landfill facility and comply with any regulatory requirements (post-closure) as part of the security for the Tenant's performance of its obligations under this Agreement. The FAM shall be provided for the benefit of the Landlord and DEP by a surety company authorized to do business in the Commonwealth of Massachusetts. The Tenant shall maintain the FAM

throughout the term of the Agreement and any extension or renewal thereof. The Tenant shall not deliver to or receive at the Property any, fill, equipment or materials and shall not do any work under this Agreement unless the Landlord has received the FAM documentation that complies with this Agreement, and with the DEP requirements. Upon the expiration or earlier termination of the Agreement as provided herein, said FAM, or any balance thereof remaining after Landlord's rightful use of and set-off against the FAM, will be returned to Tenant.

(d) Prior to commencement of the work under this Agreement, and as security for the Tenant's covenants and obligations under the Agreement, the Tenant shall provide and maintain during the term of the Agreement for the benefit of the Landlord (i) a standby letter of credit, or (ii) a payment bond, or (iii) other financial guarantee in form and substance and issued by an institution licensed to conduct business in the Commonwealth of Massachusetts and acceptable to and approved by the Board of Selectmen in the amount of _____ and No/100 Dollars (\$_____.00).

9. INDEMNIFICATION.

(a) Tenant shall at all times comply with all applicable laws, bylaws, statutes, ordinances, rules and regulations of municipal, state and federal governmental authorities now or hereafter in force and effect relating to the Acton Business Center and/or the constructions, installation, maintenance, location, use, operation, and removal of improvements authorized herein, and Tenant agrees that it shall fully indemnify Landlord and defend and hold Landlord harmless from and against any and all injury, loss, damage or liability (or any claims in respect of the foregoing), costs or expenses (including reasonable attorneys' fees and court costs) arising from the installation, use, maintenance, operation, repair or removal of the Acton Business Center or Tenant's breach of any provision of this Agreement, except to the extent attributable to the gross negligence or intentional act or omission of Landlord, its employees, agents or independent contractors (not including the Tenant). Without limitation, Tenant shall defend, indemnify and hold the Town harmless against any and all claims, actions, suits, causes of action, and demands whatsoever, in law or in equity, and any and all losses, costs, damages and liabilities of any kind brought against the Town of Acton and/or its agents, officers, employees, representatives, committees, boards and commissions arising from or relating to any act or omission of the Tenant, its agents, officers employees, contractors, subcontractors, representatives, servants, and invitees, and their respective heirs, administrators, successors and assigns, in the performance of this Agreement, including without limitation closing and capping of the Acton landfill and post-closure use of the Premises and all operations of Tenant relating thereto.

(b) Notwithstanding anything to the contrary in this Agreement, Tenant waives any claims that it may have against the Landlord with respect to consequential, incidental or special damages.

10. WARRANTIES.

(a) Tenant and Landlord each acknowledge and represent that it is duly organized, validly existing and in good standing and has the right, power and authority to enter into this Agreement and bind itself hereto through the party set forth as signatory for the party below.

(b) Landlord represents and warrants that as long as Tenant is not in default then Landlord grants to Tenant sole, actual, quiet and peaceful use, enjoyment and possession of the Premises (and non-exclusive right to access thereto).

11. ENVIRONMENTAL.

(a) Tenant agrees that it will be responsible for compliance with any and all environmental and industrial hygiene laws, including any bylaws, regulations, guidelines, standards, or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene condition or other matters as may now or at any time hereafter be in effect, that are related to the Tenant's Acton Business Center or activities conducted in or on the Property or the Premises.

(b) Tenant agrees to defend, hold harmless and indemnify Landlord from and to assume all duties, responsibilities, and liabilities at its sole cost and expense (including payment of penalties, sanctions, forfeitures, losses, costs, or damages) and for responding to any action, notice, claim, order, summons, citation, directive, litigation, investigation or proceeding which is related to (i) Tenant's failure to comply with any environmental or industrial hygiene law, including without limitation any bylaw, regulations, guidelines, standards or policies of any governmental authorities regulating or imposing standards of liability or standards of conduct with regard to any environmental or industrial hygiene conditions or matters as may now or hereafter be in effect related to the Tenant's Acton Business Center or activities conducted in or on the Property, and (ii) any environmental or industrial hygiene conditions that arise out of or are in any way related to activities conducted by the Tenant on the Premises unless the environmental conditions are caused solely by the Landlord.

(c) The indemnifications of this Section 11 Environmental specifically include reasonable costs, expenses and fees incurred in connection with any investigation of Property conditions or any clean-up, remediation, removal or restoration work required by any governmental authority arising out of or relating to Tenant's activities on the Property. The provisions of this Section 11 Environmental will survive the expiration or termination of this Agreement.

12. ACCESS. Subject to applicable laws, rules and regulations governing access to and from State Route 2, at all times throughout the Term of this Agreement, Tenant and its employees, agents, subcontractors, and customers will have vehicular access to and over the Property, exclusively from Route 2 to the Premises, for the construction, installation, maintenance and operation of the Acton Business Center and any utilities serving the Premises. Tenant shall be responsible for all improvements to the access and egress points along Route 2 as well as any required permitting with Massachusetts Highway Department or other permitting agency. With the exception of emergency police and fire protection vehicles and equipment if required, at no time will trucks, cars, or other vehicles and equipment be allowed to use Forest Road for access to or from the Property or the Premises.

13. REMOVAL/RESTORATION. Tenant covenants and agrees that, in Landlord's sole discretion, any part of the Acton Business Center constructed, erected, improved, upgraded, or placed on the Premises by Tenant will become and be considered as being affixed to the Property. Any such improvements shall, in Landlord's sole discretion, be left by Tenant at the end of the Term and be the property of the Landlord. Any improvements that Landlord does not elect to have remain on the Property, shall be removed by Tenant within thirty (30) days of the end of the Term. Tenant will, to the extent reasonable, restore the Premises to its condition at the commencement of the Agreement, except for the required leasehold improvements, reasonable wear and tear, and loss by casualty or other causes beyond Tenant's control. Tenant shall not be required to remove from the Premises or the Property any approved underground utilities installed for the Acton Business Center.

14. MAINTENANCE/UTILITIES.

(a) Tenant will keep and maintain the Premises, including access thereto in good condition, reasonable wear and tear and damage from the elements excepted. Tenant's maintenance obligation shall include without limitation removal of snow from the Premises and access thereto.

(b) Tenant will be responsible for paying on a monthly or quarterly basis all utilities charges for electricity, telephone service or any other utility used or consumed by Tenant on the Premises. Landlord will reasonably cooperate with any utility company requesting an easement over, under and across the Property in order for the utility company to provide service to the Tenant. Landlord will not be responsible for interference with, interruption of or failure of such services.

(c) Tenant will not erect or cause to be erected any signs outside (or visible from the outside of) the Premises, without the prior written consent of Landlord in each instance, except as required for notification of Tenant in the event of an emergency or as required by law.

15. DEFAULT AND RIGHT TO CURE.

(a) The following will be deemed a default by Tenant and a breach of this Agreement:

- (i) non-payment of Rent if such Rent remains unpaid for more than thirty (30) days after receipt of written notice from Landlord of such failure to pay; or
- (ii) Tenant's failure to perform any other term or condition under this Agreement within forty-five (45) days after receipt of written notice from Landlord specifying the failure. No such failure, however, will be deemed to exist if Tenant has commenced to cure such default within such period and provided that such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Tenant. If Tenant remains in default beyond any applicable cure period, Landlord will have the right to exercise any and all rights and remedies available to it under law and equity.
- (iii) The written admission by Tenant that it is bankrupt and the filing by Tenant of a voluntary petition as such under the Federal Bankruptcy Code, or the consent by Tenant to the appointment by a court of a receiver or trustee for all or a substantial portion of its property or business, or should proceedings be instituted by or against Tenant for bankruptcy, insolvency, receivership, or if Tenant should be adjudicated as bankrupt, insolvent or placed in receivership, or the making by Tenant of any arrangement with or for the benefit of its creditors involving an assignment to a trustee, receiver, or similar fiduciary regardless of how designated of all or a substantial portion of Tenant's property or business.
- (iv) The final adjudication of Tenant as a bankrupt after the filing of an involuntary petition under the Federal Bankruptcy Code, but no such adjudication shall be regarded as final unless and until the order of adjudication is no longer appealable.
- (v) Failure on the part of Tenant to pay all or any amount required to be paid to the Landlord under this Agreement when such amount becomes due and payable unless the same is paid within thirty (30) days after written demand therefore by the Landlord accompanied by notice to Tenant that unless the same is not so paid, the default will constitute an Event of Default.

- (vi) Upon any default by Tenant under the above contingencies, Landlord may, if Landlord so elects, at any time thereafter, terminate this Agreement and the term hereof, upon giving to Tenant [or to any trustee, receiver, non-permitted assignee or other person in charge of or acting as custodian of the assets or property of Tenant], ten (10) days notice in writing of Landlord's intention so to do. Upon the giving of such notice, this Agreement and the term hereof will end on the date fixed in such notice as if the said date was the date originally fixed in this Agreement for the expiration hereof; and Landlord will have the right to remove all persons, goods, fixtures and chattels therefrom, by force or otherwise, without liability for damages

(b) The following will be deemed a default by Landlord and a breach of this Agreement. Landlord's failure to perform any term, condition or breach of any warranty or covenant applicable to Landlord under this Agreement within forty-five (45) days after receipt of written notice from Tenant specifying the failure, No such failure, however, will be deemed to exist if Landlord has commenced to cure the default within such period and provided such efforts are prosecuted to completion with reasonable diligence. Delay in curing a default will be excused if due to causes beyond the reasonable control of Landlord. If Landlord remains in default beyond any applicable cure period, Tenant will have the right to exercise any and all rights available to it under law and equity, including the right to cure Landlord's default and to deduct the reasonable, documented, out-of-pocket costs of such cure from any monies due to Landlord from Tenant.

(c) Except as otherwise provided in this Agreement, all covenants and agreements to be kept or performed by Tenant under the terms of this Agreement will be performed by Tenant at Tenant's sole cost and expense and without any reduction of Rent. If Tenant will be in default in its obligations under this Agreement to pay any sum of money other than rental or to perform any other act hereunder, Landlord may, but will not be obligated to, make any such payment or perform any such act on Tenant's part without waiving its rights based upon any default of Tenant and without releasing Tenant from any obligation hereunder. All reasonable sums paid or incurred by Landlord, together with interest thereon at a rate equal to the greater of (i) one percent (1%) for each calendar month or part thereof, or (ii) the maximum rate of interest permissible by law, from the date of such payment or the incurring of such cost by Landlord, whichever occurs first, will be paid to Landlord on demand.

16. ASSIGNMENT/SUBLEASE. Upon completion of the leasehold improvements required under Section 1© of this Agreement, Tenant shall have the right to assign this Agreement or sublease the Premises, the Acton Business Center, and/or its rights herein, in whole or in part, with the Landlord's prior express written consent, which shall not be unreasonably withheld or delayed. Landlord shall have the right to condition such consent on reasonable terms.

17. NOTICES. All notices, requests, demands and communications hereunder will be given by first class certified or registered mail, return receipt requested, or by a nationally recognized overnight courier, postage prepaid, to be effective when properly sent and received, refused or returned undelivered. Notices will be addressed as follows:

If to Tenant: _____

If to Landlord: Town Manager
Town of Acton
472 Main Street

Acton, Massachusetts 01720

With a copy to: Stephen D. Anderson, Esq.
Town Counsel
Anderson & Kreiger, LLP
43 Thorndike Street
Cambridge, MA 02141

Either party hereto may change the place for the giving of notice to it by thirty (30) days prior written notice to the other as provided herein.

18. SEVERABILITY. If any term or condition of this Agreement is found unenforceable, the remaining terms and conditions will remain binding upon the parties as though said unenforceable provision were not contained herein. However, if the invalid, illegal or unenforceable provision materially affects this Agreement then the Agreement may be terminated by either party on ten (10) business days prior written notice to the other party hereto.

19. CONDEMNATION. In the event Landlord receives notification of any condemnation proceedings affecting the Property, Landlord will provide notice of the proceeding to Tenant within fourteen (14) days. If a condemning authority takes all of the Property, or a portion sufficient, based on an objectively reasonable determination, to render the Premises unsuitable for Tenant, this Agreement will terminate as of the date the title vests in the condemning authority. The parties will each be entitled to pursue their own separate awards in the condemnation proceeds, provided that any award to Tenant will not diminish Landlord's recovery. Tenant will be entitled to reimbursement for any prepaid Rent on a pro rata basis.

20. CASUALTY. Landlord and Tenant will provide notice to the other of any casualty affecting the Property within fourteen (14) days of the casualty. If any part of the Acton Business Center or Property is damaged by fire or other casualty so as to render the Premises unsuitable, based on an objectively reasonable determination, then Tenant may terminate this Agreement by providing written notice to the Landlord, which termination will be effective as of the date of such damage or destruction. The parties will each be entitled to pursue their own separate awards of insurance proceeds, provided that any award to Tenant will not diminish Landlord's recovery. Upon such termination, Tenant will be reimbursed for any prepaid Rent on a prorata basis.

21. MECHANIC'S LIENS. Tenant will not subject Landlord's interest in the Property to any mechanic's lien or any other lien whatsoever. If any mechanic's lien or other lien, charge or order for payment of money will be filed as a result of the act or omission of Tenant, Tenant will cause such lien, charge or order to be discharged or appropriately bonded or otherwise reasonably secured ("Secured") within sixty (60) days after notice from Landlord thereof. If Tenant will fail to cause the lien or encumbrance to be Secured within the sixty (60) day period, then Landlord will be entitled, but not obligated to, discharge or bond same. Tenant will indemnify and save Landlord harmless from all liabilities and costs to the extent resulting from Tenant's failure to timely secure same.

22. FORCE MAJEURE. Notwithstanding anything to the contrary contained in this Agreement, if Landlord or Tenant is delayed or prevented from performing any act which it is obligated to perform under this Agreement for causes beyond its reasonable control, (including, without limitation, repair, restoration and/or maintenance obligations) related to acts of God, war, governmental restrictions, or the inability to procure the necessary labor or materials, then Landlord or Tenant's time for performance of such obligations(s) here under will be reasonably extended by the period during which Landlord or Tenant was unable to perform, and the non-performing party will have no liability to the other party (nor will either party be entitled to terminate this Agreement or claim any abatement under this Agreement) on account of any such delay.

23. MISCELLANEOUS.

(a) **Amendment/Waiver.** This Agreement cannot be amended, modified or revised unless done in writing and signed by an authorized agent of the Landlord and an authorized agent of the Tenant. No provision may be waived except in a writing signed by both parties.

(b) **Memorandum/Short Form Lease.** Either party will, at any time upon fifteen (15) business days prior written notice from the other, execute, acknowledge and deliver to the other a recordable Memorandum or Short Form of Lease. Either party may record this Memorandum or Short Form of Lease at any time, in its absolute discretion.

(c) **Bind and Benefit.** The terms and conditions contained in this Agreement will run with the Property and bind and inure to the benefit of the parties, their respective heirs, executors, administrators, successors and assigns.

(d) **Entire Agreement.** This Agreement and the exhibits attached hereto, all being a part hereof, constitute the entire agreement of the parties hereto and will supersede all prior offers, negotiations and agreements with respect to the subject matter of this Agreement.

(e) **Governing Law.** This Agreement will be governed by the laws of the state in which the Premises are located, without regard to conflicts of law.

(f) **Interpretation.** Unless otherwise specified, the following rules of construction and interpretation apply: (i) captions are for convenience and reference only and in no way define or limit the construction of the terms and conditions hereof; (ii) use of the term "including" will be interpreted to mean "including but not limited to"; (iii) whenever a party's consent is required under this Agreement, except as otherwise stated in the Agreement or as same may be duplicative, such consent will not be unreasonably withheld, conditioned or delayed; (iv) exhibits are an integral part of the Agreement and are incorporated by reference into this Agreement; (v) use of the terms "termination" or "expiration" are interchangeable; and (vi) reference to a default will take into consideration any applicable notice, grace and cure periods.

(g) **Estoppel.** Either party will, at any time upon twenty (20) business days prior written notice from the other, execute, acknowledge and deliver to the other a statement in writing (i) certifying that this Agreement is unmodified and in full force and effect (or, if modified, stating the nature of such modification and certifying this Agreement, as so modified, is in full force and effect) and the date to which the Rent and other charges are paid in advance, if any, and (ii) acknowledging that there are not, to such party's knowledge, any uncured defaults on the part of the other party hereunder, or specifying such defaults if any are claimed. Any such statement may be conclusively relied upon by any prospective purchaser or encumbrancer of the Premises. The requested party's failure to deliver such a statement within such time will be conclusively relied upon by the requesting party that (i) this Agreement is in full force and effect, without modification except as may be properly represented by the requesting party, (ii) there are no uncured defaults in either party's performance, and (iii) no more than one month's Rent has been paid in advance.

(h) **No Electronic Signature/No Option.** The submission of this Agreement to any party for examination or consideration does not constitute an offer, reservation of or option for the Premises based on the terms set forth herein. This Agreement will become effective as a binding Agreement only upon the handwritten legal execution, acknowledgment and delivery hereof by Landlord and Tenant.

IN WITNESS WHEREOF, the parties have caused this Agreement to be effective as of the last date written below.

WITNESSES:

"LANDLORD"

Town of Acton

Print Name: _____

Print Name: _____

By: _____

Print Name: _____

Its: _____

Date: _____

"TENANT"

[Insert name of Tenant]

Print Name: _____

Print Name: _____

By: _____

Print Name: _____

Its: _____

Date: _____

[ACKNOWLEDGMENTS APPEAR ON THE NEXT PAGE.]

TENANT ACKNOWLEDGMENT

COMMONWEALTH OF MASSACHUSETTS)
) ss:
COUNTY OF _____)

On this ____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____ (name of document signer), proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose.

(as partner for _____, a corporation)
(as _____ for _____, a corporation)
(as attorney in fact for _____, the principal)
(as _____ for _____, (a) (the) _____)

Notary Public: _____
My Commission Expires: _____

LANDLORD ACKNOWLEDGMENT

COMMONWEALTH OF MASSACHUSETTS)
) ss:
COUNTY OF MIDDLESEX)

On this ____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____ (name of document signer), proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose.

(as _____ for the Town of Acton, a municipal corporation)

Notary Public: _____
My Commission Expires: _____

EXHIBIT 1

DESCRIPTION OF PREMISES

Page ____ of ____

to the Agreement dated _____, 2004, by and between the Town of Acton, a municipal corporation, as Landlord, and _____, a _____, as Tenant.

The Premises are described and/or depicted as follows:

- (i) approximately 17.75 acres of land located off Route 2, in the Town of Acton in the County of Middlesex, Commonwealth of Massachusetts, shown as Lot 2 on a plan entitled "Acton Business Center Development Site Without Transfer Station, Conceptual Plan" prepared by the Acton Engineering Department, dated 10/4/04, scale 1" = 60', attached hereto, subject to the Town's reserved easements for access, ramps, service roads, and drainage as shown on said plan, and
- (ii)) approximately 3.48 acres of land located off Route 2, in the Town of Acton in the County of Middlesex, Commonwealth of Massachusetts, shown as Lot 3 on said plan; provided, however, that upon completion of the mandatory leasehold improvements required by this Agreement and acceptance thereof by the Landlord, the Tenant shall forthwith release and re-convey to the Landlord (on terms acceptable to the Landlord's Board of Selectmen) all of the Tenant's right, title and interest in Lot 3 as shown on said plan.

SITE ADDRESS: PLAT / LOT/ MAP, STREET ADDRESS, CITY/TOWN, COUNTY, STATE

Notes:

1. This Exhibit may be replaced by a land survey and/or construction drawings of the Premises once received by Tenant and approved by the Landlord.
2. Any setback of the Premises from the Property's boundaries shall be the distance required by the applicable governmental authorities including without limitation local zoning requirements.
3. Width of access road shall be the width required by the applicable governmental authorities, including police and fire departments and Mass. Highway Department.

EXHIBIT 2

LANDLORD'S REQUEST FOR PROPOSALS

EXHIBIT 3

**BID SUBMITTED BY TENANT IN RESPONSE TO
LANDLORD'S REQUEST FOR PROPOSALS**

EXHIBIT 4

ADDITIONAL SPECIFICATIONS FOR LANDFILL CLOSURE AND CAPPING

EXHIBIT 5

LIST OF PREVAILING WAGES

MEMORANDUM OF LEASE

[FOLLOWS ON NEXT PAGE]

**MEMORANDUM
OF
LEASE**

THIS LEASE AGREEMENT ("**Agreement**"), dated as of the date below, is entered into by the TOWN OF ACTON, a MUNICIPAL CORPORATION, having a mailing address of 472 Main Street, Acton, Massachusetts 01720 (hereinafter referred to as "**Landlord**") and _____, a _____ having a mailing address of _____ (hereinafter referred to as "**Tenant**").

1. Landlord and Tenant entered into a certain Lease Agreement ("Agreement") on the _____ day of _____, 2004, for the purpose of constructing, installing, operating and maintaining a new Acton Business Center and other improvements. All of the foregoing are set forth in the Agreement.
2. The term of the Agreement is for an Initial Term of ten (10) years commencing on the date that the Agreement is fully-executed and ending on the last day of the month in which the fifth (10th) anniversary of the Commencement Date occurs, with two (2) successive five (5) year options to renew, at Landlord's sole discretion.
3. The portion of the land being leased to Tenant (the "Premises") is described in **Exhibit 1** annexed hereto.
4. The Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors, and assigns, subject to the provisions of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Lease as of the day and year first above written.

WITNESSES:

Print Name: _____

Print Name: _____

Print Name: _____

Print Name: _____

"LANDLORD"

Town of Acton

By: _____

Print Name: _____

Its: _____

Date: _____

"TENANT"

[Insert name of Tenant]

By: _____

Print Name: _____

Its: _____

Date: _____

[ACKNOWLEDGMENTS APPEAR ON THE NEXT PAGE.]

TENANT ACKNOWLEDGMENT

COMMONWEALTH OF MASSACHUSETTS)
) ss:
COUNTY OF _____)

On this ____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____ (name of document signer), proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose.

(as partner for _____, a corporation)
(as _____ for _____, a corporation)
(as attorney in fact for _____, the principal)
(as _____ for _____, (a) (the) _____)

Notary Public: _____
My Commission Expires: _____

LANDLORD ACKNOWLEDGMENT

COMMONWEALTH OF MASSACHUSETTS)
) ss:
COUNTY OF MIDDLESEX)

On this ____ day of _____, 20__, before me, the undersigned notary public, personally appeared _____ (name of document signer), proved to me through satisfactory evidence of identification, which were _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he) (she) signed it voluntarily for its stated purpose.

(as _____ for the Town of Acton, a municipal corporation)

Notary Public: _____
My Commission Expires: _____

EXHIBIT 1

DESCRIPTION OF PREMISES

Page ____ of ____

to the Agreement dated _____, 2004, by and between the Town of Acton, a municipal corporation, as Landlord, and _____, a _____, as Tenant.

The Premises are described and/or depicted as follows:

[TO FOLLOW]

located off Route 2, in the Town of Acton in the County of Middlesex, Commonwealth of Massachusetts

SITE ADDRESS: PLAT / LOT/ MAP, STREET ADDRESS, CITY/TOWN, COUNTY, STATE

Notes:

1. This Exhibit may be replaced by a land survey and/or construction drawings of the Premises once received by Tenant and approved by the Landlord.
2. Any setback of the Premises from the Property's boundaries shall be the distance required by the applicable governmental authorities including without limitation local zoning requirements.
3. Width of access road shall be the width required by the applicable governmental authorities, including police and fire departments and Mass. Highway Department.

PURCHASE AND SALE AGREEMENT

This ____ day of _____, 2004:

The Town of Acton, a municipal corporation with a principal place of business at Town Offices, 472 Main Street, Acton, MA 01720 hereinafter called the Seller or Town, agrees to SELL and

_____, hereinafter called the Buyer, agrees to BUY, upon the terms hereinafter set forth, the following described premises:

1. DESCRIPTION

A certain parcel of land in Acton, Middlesex County, Massachusetts consisting of (i) approximately 17.75 acres of land located off Route 2 shown as Lot 2 on a plan entitled "Acton Business Center Development Site Without Transfer Station, Conceptual Plan" prepared by the Acton Engineering Department, dated 10/4/04, scale 1" = 60', attached hereto as **Exhibit A**, subject to the Town's reserved easements for access, ramps, service roads, and drainage as shown on said plan and to be described with particularity in the Seller's Deed to the Buyer, and (ii)) approximately 3.48 acres of land located off Route 2, in the Town of Acton in the County of Middlesex, Commonwealth of Massachusetts, shown as Lot 3 on said plan,
[DRAFTING NOTE: Description to be replaced with surveyed description when available]

being portions of the same land which was acquired by the Town by Instrument dated _____, and recorded in the Middlesex South Registry of Deeds at Book _____, Page _____, on _____, . The sale involves land only; there are no fixtures involved in this transaction.

2. TITLE DEED

Said premises are to be conveyed by a release deed running to the Buyer, or to the nominee designated by the Buyer by written notice to the Seller at least seven days before the deed is to be delivered as herein provided.

Buyer hereby acknowledges and accepts that Seller's title to the premises as of the date of this Agreement is acceptable to Buyer for all purposes. Buyer shall have rights with respect to defects in Seller's title only with respect to defects in title arising after the date of this Agreement, which Buyer claims in a subsequent written notice to Seller. Buyer hereby waives and accepts title to the premises subject to any defects in title existing as of the date of this Agreement.

In the event that Seller, having used reasonable efforts to cure any defects claimed in a notice given pursuant to the immediately preceding paragraph (subject to the limitation that Seller shall not be obligated to spend more than \$1,000.00 including attorneys' fees incurred in connection with such efforts), is unable to cure the defects claimed in such notice within thirty (30) days

after the date of such notice is given, Seller shall have the right to terminate this Agreement upon notice to Buyer.

3. **PLANS**

If said deed refers to a plan necessary to be recorded therewith the Seller shall reasonably cooperate with Buyer in the production and delivery of such plan with the deed in form adequate for recording or registration provided that Seller shall not be obligated to spend more than \$300 including attorneys' fees incurred in connection with its obligations under the provisions of this Section 3.

4. **REGISTERED TITLE**

In addition to the foregoing, if the title to said premises is registered, said deed shall be in form sufficient to entitle the Buyer to a Certificate of Title of said premises, and the Seller shall reasonably cooperate with Buyer in the production and delivery with said deed all instruments, if any, necessary to enable the Buyer to obtain such Certificate of Title.

5. **TIME FOR PERFORMANCE; DELIVERY OF DEED**

Such deed is to be delivered at 10:00 o'clock A.M. on the ____ day of _____, 2005, at the Board of Selectmen's Office, Town Offices, 472 Main Street, Acton, MA, unless otherwise agreed upon in writing, or unless such date is extended pursuant to the terms of the Agreement. It is agreed that time is of the essence of this Agreement.

6. **POSSESSION AND CONDITION OF PREMISES**

Full possession of said premises free of all tenants and occupants, except as herein provided, is to be delivered at the time of the delivery of the deed, said premises to be then (a) in the same condition as they now are, (b) not in record violation of building or zoning laws, and (C) free and clear of personal property and equipment belonging to Seller. The Buyer shall be entitled to inspect said premises prior to the delivery of the deed in order to determine whether the condition thereof complies with the terms of this clause.

The condition of the Premises as of the date of this Agreement is hereby deemed to meet the requirements of this Section 6. Buyer shall have rights with respect to violations of zoning and building laws only with respect to violations of zoning and building laws arising after the date of this Agreement which Buyer claims in a subsequent written notice to Seller. Buyer shall take the premises subject to any such violations of building and zoning laws existing as of the date of this Agreement.

In the event that Seller, having used reasonable efforts to cure violations claimed in a notice given pursuant to the immediately preceding paragraph (subject to the limitation that Seller shall not be obligated to spend more than \$1,000 including attorneys' fees incurred in connection with such efforts), is unable to cure the violations claimed in such notice within thirty (30) days after

the date of such notice is given, Seller shall have the right to terminate this Agreement upon notice to Buyer, in which event the Deposit, and all interest thereon, shall be returned to Buyer, and this Agreement shall be void and without recourse to the parties hereto.

7. **EXTENSION TO PERFECT TITLE OR MAKE PREMISES CONFORM**

If the Seller shall be unable to give title or to make conveyance, or to deliver possession of the premises, all as herein stipulated, or if at the time of the delivery of the deed the premises do not conform with the provisions hereof, then any payments made under this agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto, except that the Seller shall first use reasonable efforts to remove any defects in title, or to deliver of possession as provided herein, or to make the said premises conform to the provisions hereof, as the case may be, in which event the time for performance hereof shall be extended for a period of thirty days; provided, however, that in using such reasonable efforts Seller shall not be required to expend more than \$1,000 in the aggregate, inclusive of reasonable attorneys' fees.

8. **FAILURE TO PERFECT TITLE OR MAKE PREMISES CONFORM**

If at the expiration of the extended time the Seller shall have failed so to remove any defects in title, deliver possession, or make the premises conform, as the case may be, all as herein agreed, or if at any time during the period of this agreement or any extension thereof, the holder of a mortgage on said premises shall refuse to permit the insurance proceeds, if any, to be used for such purposes, then any payments made under this agreement shall be forthwith refunded and all other obligations of the parties hereto shall cease and this agreement shall be void without recourse to the parties hereto.

9. **BUYER'S ELECTION TO ACCEPT TITLE**

The Buyer shall have the election, at either the original or any extended time for performance, to accept such title as the Seller can deliver to the said premises in their then condition and to pay therefore the purchase price without deduction, in which case, subject to the provisions of Section 26 of this Agreement, Seller shall convey such title.

10. **ACCEPTANCE OF DEED**

The acceptance of a deed by Buyer or his nominee as the case may be, shall be deemed to be a full performance and discharge of every agreement and obligation herein contained or expressed, except such as are, by the terms hereof, to be performed after the delivery of said deed.

11. **USE OF PURCHASE PRICE TO CLEAR TITLE:**

To enable Seller to make conveyance as herein provided, Seller may (if not paid prior to the Closing Date), at the time of delivery of the deed, use the Purchase Price, or any part thereof, to obtain the instruments necessary to clear the title of any encumbrances or interests which are to be discharged, removed or eliminated by Seller in accordance with the terms hereof, and all required instruments are to be recorded by and at the expense of Buyer (subject to the limits set forth in Section 27, simultaneously with the deed or a reasonable time thereafter, in accordance with local conveyancing practices. Seller shall not be obligated to spend more than \$1,000 including attorneys' fees, incurred to obtain any instrument required under the provisions of this Section 11.

12. **PAYMENT OF REAL ESTATE TAXES**

Seller's performance hereunder is conditioned upon Buyer making a payment in lieu of taxes, at closing, in accordance with M.G.L. c. 44, § 63A.

13. **CERTIFICATION OF COMPLIANCE WITH TAX LAWS**

In accordance with G.L. c. 62C, § 49A, Buyer shall certify, in the form attached hereto as **Exhibit B**, under the pains and penalties of perjury, that they have complied with all laws of the Commonwealth of Massachusetts relating to the payment of taxes. Such certification shall be made again and executed as of the time of closing.

14. **BENEFICIAL INTEREST DISCLOSURE STATEMENT**

In accordance with G.L. c. 7, § 40J, Buyers shall prepare, execute and file with the Commissioner of the Division of Capital Asset Management a statement, in the form attached hereto as **Exhibit C**, signed under the pains and penalties of perjury, disclosing the names and addresses of all persons having a beneficial interest in the Premises, at the time of closing.

15. **TOWN MEETING AUTHORIZATION/APPROPRIATION**

Seller's performance hereunder is conditioned upon approval of the disposition of the premises by all necessary votes of the Acton Annual Town Meeting of April, 2005.

16. **UNIFORM PROCUREMENT ACT**

The parties enter into this Agreement as a result of the response for competitive proposals sought by the Town pursuant to M.G.L. c. 30B, § 16 (the "RFP"). In accordance with the requests for proposals for the disposition/acquisition of municipal real estate, sealed proposals were received at the Office of the Town Manager on _____, 2004. This Agreement incorporates by reference all terms and conditions of the RFP and of the Seller's award letter, a copy of which is attached as **Exhibit D**.

17. **BROKERS**

Buyer represents and warrants to Seller that Buyer has not contacted any real estate broker in connection with this transaction and was not directed to Seller as a result of any services or facilities of any real estate broker. Buyer agrees to indemnify Seller against and to hold Seller harmless from any loss, damage, cost (including, without limitation, attorneys' fees) or liability which Seller may incur as a consequence of any breach of the foregoing warranty and representation. The provisions of this paragraph shall survive delivery of the deed.

18. **WARRANTIES AND REPRESENTATIONS**

The Buyer acknowledges that the Buyer has not been influenced to enter into this transaction nor has it relied upon any warranties or representations not set forth or incorporated in this agreement or previously made in writing.

19. **CLOSING DOCUMENTS:**

A. **Sellers's Documents.** At the Closing, Seller shall deliver to Buyer the following duly executed (and notarized) documents or instruments:

- (1) Release Deed to the Premises with reserved easements in accordance with the provisions of Section 2 of this Agreement (together with the original certificate of title (if available) if any portion of the Real Estate constitutes registered land).
- (2) An affidavit in the form reasonably required by Buyer's title insurer for the purposes of deleting from the owner's and lender's title policies the standard exceptions for parties in possession and mechanics' liens and any liens for sums owed to municipal lighting plants and water companies.
- (3) An affidavit establishing that Seller is not a foreign person as defined in I.R.S. Code Section 1445 (and the regulations promulgated thereunder) in the form recommended by the Internal Revenue Service for the purpose of establishing that the withholding requirements of said Section 1445 do not apply to this transaction.
- (4) Any forms required to comply with Internal Revenue Service reporting requirements.
- (5) All other instruments which may be reasonably necessary to establish Buyer as the record owner of title to the Premises, in accordance with the requirements of Section 2.
- (6) Any documents reasonably required by Buyer's mortgage lender or its counsel.

- (7) Any other documents required to be delivered at Closing pursuant to this Agreement.
- (8) A statement showing the amount of the payment in lieu of taxes due calculated in accordance with MGL Chapter 44, Section 63A.

B. Buyer's Documents. At closing, Buyer shall deliver to Seller the following duly executed (and notarized) documents or instruments in a form reasonably acceptable to Seller's counsel:

- (1) Disclosure of beneficial interest in real property transaction executed as of the closing date.
- (2) Non-delinquency statement required by M.G.L. Chapter 60, Section 77B executed as of the closing date.
- (3) A certified or bank check payable to Seller in the amount set forth in the statement showing the payment in lieu of taxes due, delivered to Buyer in accordance with Section 12 of this Agreement.
- (4) Acknowledgment regarding Title V inspection requirements.
- (5) Certificate on Noncollusion executed as of the closing date.
- (6) Certificate of the payment of taxes executed as of the closing date.
- (7) Long form Certificate of Buyer's Legal Existence with Amendments for a domestic limited liability company issued by the Secretary of the Commonwealth of Massachusetts, dated within thirty (30) days prior to closing.
- (8) Manager's Certificate as to authority of Buyer to purchase the property and authority of individuals authorized to execute documents with respect to the transaction, dated within thirty (30) days prior to closing.
- (9) Buyer's waiver under the provisions of Section 26 of this Agreement.
- (10) Reimbursement by Buyer for Seller's actual attorneys' fees and expenses with respect to the transactions contemplated under this Agreement, not to exceed \$5,000.
- (11) Instrument evidencing Buyer's obligations under the provisions of Section 28 of this Agreement.

- (12) A certified or bank check payable to Seller in the amount of \$_____, as required by Section 22 of this Agreement.
- (13) Any other documents required to be delivered at Closing pursuant to this Agreement.

20. **CONSTRUCTION OF AGREEMENT**

This instrument, executed in multiple counterparts, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, merges all prior and contemporaneous agreements, understandings, warranties or representations, is binding upon and enures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be canceled, modified or amended only by a written instrument executed by both Seller and Buyer. The captions and marginal notes are used only as a matter of convenience and are not to be considered a part of this agreement or to be used in determining the intent of the parties to it.

21. **NOTICES**

All notices required or permitted hereunder shall be deemed to have been duly given if in writing and delivered by hand or when mailed by registered or certified mail, return receipt requested, all charges paid, as set forth below:

If to the Buyer, notice shall be sent to:

with a copy to:

If to the Seller, notice shall be sent to:

Don P. Johnson
Town Manager
Town Office
472 Main Street
Acton, MA 01720

with a copy to:

Stephen D. Anderson, Esq.
Anderson & Kreiger LLP
43 Thorndike Street
Cambridge, MA 02141

22. **PURCHASE PRICE**

Subject to the adjustments described in this Agreement, the agreed purchase price ("Purchase Price") for the Premises is _____ Dollars (\$_____) payable as follows:

A. _____ Dollars (\$_____) shall be paid upon execution of this Agreement as a deposit (the "Deposit") which will be held in accordance with paragraph __ below, and will be delivered to Seller and credited against the Purchase Price at the closing as provided in paragraph __; and

B. _____ Dollars (\$_____) shall be paid at the closing by bank or certified check drawn on a bank located within the metropolitan Boston area and payable directly to Seller without intervening endorsements or wire transfer of funds in a manner reasonably acceptable to Seller's counsel.

23. **LIABILITY OF TRUSTEE, SHAREHOLDER, BENEFICIARY, ETC.**

If the Seller or Buyer executes this agreement in a representative or fiduciary capacity, only the principal or the estate represented shall be bound, and neither the Seller nor the Buyer so executing, nor any shareholder or beneficiary of any trust, shall be personally liable for any obligation, express or implied, hereunder.

24. **BUYER'S ACCESS TO PROPERTY AND INDEMNITY TO SELL**

Buyer shall have the right, from time to time, for reasonable cause and upon prior notice and approval of Sellers to enter upon the property at Buyer's sole risk and expense, for the purpose of surveys or other inspection. Buyer shall indemnify and hold Seller harmless from and against any claims for injury to persons or damage to property arising out of Buyer's or Buyer's agents' acts or omissions during the course of such surveys or other inspection.

Buyer's obligation to indemnify Seller as provided herein shall survive the termination of this Agreement and the Delivery of the Deed.

25. **BUYER'S INSPECTION OF PREMISES**

Buyer agrees and acknowledges that Buyer has been given full and ample opportunity to inspect the Premises prior to execution of this Agreement and that Buyer has, in fact, fully inspected the Premises (or declined to do so on an informed and willing basis) and is satisfied in all respects with the condition thereof; that Buyer is purchasing the Premises in an "as is" condition, without representation or warranty of any kind, either express or implied; and that Seller has made no warranty or representations whatsoever on which Buyer has relied, including, without limitation, any warranties or representations concerning (a) the condition of the Premises (including, without limitation, relating to environmental matters), (b) title, (c) zoning, or (d) any other matter relating to the Premises. Further, to the extent Seller may have made any warranties and representations at all concerning the Premises, Buyer hereby releases and discharges Seller from any and all claims, demands, causes of action and suits whatsoever which Buyer now has or at

any time hereafter may have which relates in any way to the (i) the condition of the Premises (including, without limitation, relating to environmental matters), (ii) title, (iii) zoning, (iv) any other matter relating to the Premises, or (v) by virtue of any such warranty or representation. The provisions of this paragraph shall survive delivery of the deed of the Premises.

26. **WAIVER OF CONSTRUCTIVE ACCESS**

Buyer hereby waives, relinquishes and releases any claim whatsoever it may have to any and all rights of access to the premises from any public way over, under or across other property owned by the Town of Acton as of the closing, whether such rights arise from operation of law, express grant, implication, necessity, prescriptive easement, constructive grant, judicial decree or any means whatsoever. Buyer shall deliver, at closing, an instrument to be recorded at closing and acceptable to Seller and Seller's counsel and in a form acceptable to Middlesex South District Registry of Deeds for recording in said Registry, evidencing Buyer's waiver hereunder. The provisions of this Section 26 shall survive the delivery of the deed and constitute an ongoing waiver by and agreement and obligation of Buyer.

27. **REIMBURSEMENT OF SELLER'S COST**

Buyer hereby agrees to reimburse the Town at closing for Town's actual attorneys' fees and expenses with respect to the transactions contemplated under this Agreement, provided that such reimbursement shall not exceed \$5,000.00. Buyer shall accept a final accounting of such expenses provided by the Town on or before closing. Buyer may not require backup or further justification for any such expense, unless any such expense appears commercially reckless on its face.

28. **RE-USE RESTRICTIONS ON THE PROPERTY**

On or before the third anniversary of the Closing, the Buyer shall at its sole cost and expense perform and complete to the Seller's reasonable satisfaction all design, permitting, environmental assessment, construction, landscaping and related activities for the following improvements to the Property (including capping of any adjacent Town-owned property affected by historic landfilling activities, access to which shall be allowed by a license to be issued by the Seller): the preparation for and installation of a landfill cap that meets the requirements of the DEP's Solid Waste Management Regulations (310 CMR 19.000) for closure and capping of the existing solid waste landfill on the Property, that satisfies all applicable requirements of the Seller, the Department of Environmental Protection, and the United States Environmental Protection Agency, and that meets the specifications for landfill closure and capping set forth in **Exhibit E** hereto. This obligation to perform and complete these improvements shall be specifically enforceable, and time is of the essence with respect thereto. In the event the Buyer shall fail to complete said improvements required under this Agreement on or before that date, the Seller may, without limitation of its other available remedies in law or in equity, cause the improvements to be completed by another person, firm, or corporation, and recover all costs thereof, including collection costs and attorneys fees, from the Buyer. Within sixty days of

completion of the improvements under this Agreement, the Buyer shall submit to the Seller three sets of as built plans. All costs associated with the foregoing shall be borne by the Buyer.

Upon completion of the foregoing improvements and acceptance thereof by the Seller, the Buyer shall forthwith cause to be paid all materialmen and others who performed work with respect thereto, shall forthwith cause to be discharged all liens with respect thereto, and shall release and re-convey to the Seller (for consideration of one dollar and on terms acceptable to the Board of Selectmen) all of the Seller's right, title and interest in Lot 3 as shown on the plan entitled "Acton Business Center Development Site Without Transfer Station, Conceptual Plan" prepared by the Acton Engineering Department, dated 10/4/04, scale 1" = 60', attached to **Exhibit A** hereto. This obligation shall be specifically enforceable and time is of the essence with respect to its performance.

Buyer shall use the Premises for the development, installation, construction, maintenance, operation, repair, replacement and upgrade of a new Acton Business Center consisting of offices, wholesale or retail space, outlets, hotel, research and development, bio-tech, or other similar uses (collectively, the "Acton Business Center") in compliance with current and future federal, state or local laws, bylaws, rules statutes and regulations applicable to the Premises. Seller and Buyer agree that the Acton Business Center is conceptually described on **Exhibit F** and, subject to Seller's review and approval, Buyer may make changes, improvements, alterations, upgrades or additions to this Plan appropriate for Buyer's use.

Buyer shall deliver at closing an instrument to be recorded at closing and acceptable to Seller and Seller's counsel and in a form acceptable to Middlesex South Register of Deeds for recording in said Registry, evidencing Buyer's obligations under the provisions of this Section 28, which shall run with the land and be binding upon Buyer's successors and assigns.

The provisions of this Section 28 and Exhibits D and E shall survive the closing.

SELLER:

BUYER:

TOWN OF ACTON
By its Board of Selectmen

F. Dore Hunter, Chairman

By
Its duly authorized _____

Peter K. Ashton

Walter Foster

Robert Johnson, Clerk

William H. Schupert

EXHIBIT A

**Plan entitled "Acton Business Center Development Site Without Transfer Station,
Conceptual Plan" prepared by the Acton Engineering Department,
dated 10/4/04, scale 1" = 60'**

EXHIBIT B

Copy of Certificate of Tax Compliance

EXHIBIT C

Copy of Beneficial Interest Disclosure Statement

EXHIBIT D

Copy of Seller's Award Letter

EXHIBIT E

Copy of Re-Use Agreement

EXHIBIT F

Conceptual Plan for Acton Business Center

act/postNESWC/cdm-rfp-docs/p&s-business-center-1B

CENTRAL REGISTER - GENERAL CONTRACT

CR-2 Public Contracts that are construction related and estimated to exceed \$10,000.

Published two weeks prior to general bid opening.

AWARDING AUTHORITY AND PROJECT INFORMATION

AGENCY:

Town of Acton, Massachusetts

PROJECT NUMBER:

Estimated Cost: \$ 5,000,000

Contractor Qualification:

The successful bidder, or their key personnel, should have a minimum of 5-years experience in land development projects of similar size and complexity. Prior experience in development of former landfills and/or 21E sites is expected.

PROJECT:

Request for Proposals
Acton Business Center

CONTACT INFORMATION:

PLANS/SPECIFICATIONS AVAILABLE:

(place, date and time)

After November 1, 2004

Contact Person: Mr. Bruce Stamski

Phone: (978) 264-9628

Fax: (978) 264-9630

Town of Acton
472 Main Street
Acton, Massachusetts 01720

CONTRACT INFORMATION:

SUB BID DEADLINE:

(date and time)

Not Applicable

GENERAL BID DEADLINE:

(date and time)

January 6, 2004

SUB BID CATEGORIES:

None

ADDITIONAL INFORMATION:

A pre-bid meeting will be held at 10:00 a.m. on December 1, 2004 at the Acton Town Hall.
427 Main Street, Acton Massachusetts - a site walk will immediately follow.